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9
10 *Counsel for Ryan Drexler*

11 **UNITED STATES BANKRUPTCY COURT**

12 **DISTRICT OF NEVADA**

13 In re

14 MUSCLEPHARM CORPORATION,

15 Debtor.

Case No. BK-22-14422-NMC

Chapter 11

16
17 **DECLARATION OF MICHAEL P. RICHMAN**

18 1. I am a member of the law firm Steinhilber Swanson LLP. Our firm is co-counsel to Ryan
19 Drexler in the above-captioned proceeding. I make this declaration in support of Ryan Drexler's (A)
20 *Status Report on Trustee Motion Discovery and (B) Motion to Compel Certain Pretrial Discovery*.

21 2. Attached hereto as Exhibit A is a true and correct copy of the Debtor's (1) *First Set of*
22 *Interrogatories to Ryan Drexler* and (2) *First Set of Requests for Production of Documents to Ryan*
23 *Drexler*, which were served on July 5, 2023.

24 3. Attached hereto as Exhibit B is a true and correct copy of Empery's (1) *First Set of*
25 *Interrogatories to Ryan Drexler* and (2) *First Set of Requests for Production of Documents to Ryan*
26 *Drexler*, which were served on July 5, 2023.

27 4. Attached hereto as Exhibit C is a true and correct copy of *Ryan Drexler's Omnibus*

1 *Interrogatories, Requests for Production of Documents, and Notices of Deposition to MusclePharm,*
 2 *Eric Hillman, Jason Keenan, Will Hovi, and Nicholas Rubin*, which were served on July 5, 2023 (Pacific
 3 Time).

4 5. Attached hereto as Exhibit D is a true and correct copy of *Ryan Drexler's Omnibus*
 5 *Interrogatories, Requests for Production of Documents, and Notices of Depositions to Empery Tax*
 6 *Efficient LP, Ryan Lane, and Timothy Silver*, which were served on July 5, 2023 (Pacific Time).

7 6. Attached hereto as Exhibit E is a true and correct copy of *Ryan Drexler's Responses to*
 8 *MusclePharm Corporation's First Set of Interrogatories and Requests for Production*.

9 7. Attached hereto as Exhibit F is a true and correct copy of *Ryan Drexler's Supplemental*
 10 *Response to MusclePharm Corporation's Interrogatory No. 11*.

11 8. Attached hereto as Exhibit G is a true and correct copy of an email chain of various meet-
 12 and-confer discussions amongst counsel relating to the discovery in this case.

13 9. Attached hereto as Exhibit H is a true and correct copy of an email I sent to counsel dated
 14 July 18, 2023 in which I designated matters for examination as required by Civil Rule 30(b)(6).

15 10. Attached hereto as Exhibit I is a true and correct copy of *Empery Tax Efficient LP's*
 16 *Responses and Objections to Ryan Drexler's Omnibus Interrogatories, Requests for Production of*
 17 *Documents, and Notices of Depositions to Empery Tax Efficient LP, Ryan Lane and Timothy Silver*.

18 11. Attached hereto as Exhibit J is a true and correct copy of Drexler's *Notice of Deposition*
 19 *of Ryan Lane*.

20 12. Attached hereto as Exhibit K is a true and correct copy of the *Debtor's Objections and*
 21 *Responses to Ryan Drexler's Omnibus Interrogatories, Requests for Production of Documents, and*
 22 *Notices of Deposition to MusclePharm, Eric Hillman, Jason Keenan, Will Hovi, and Nicholas Rubin*.

23 13. Attached hereto as Exhibit L is a true and correct copy of *Brian Slater's Responses and*
 24 *Objections to Ryan Drexler's Subpoena for Document Production and Testimony*.

25 Dated: July 24, 2023.

26 _____
 27 /s/ Michael P. Richman
 28 Michael P. Richman

EXHIBIT A

EXHIBIT A

Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
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Gabrielle A. Hamm, Esq.
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Las Vegas, NV 89101
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Facsimile: 702.442.9887

Attorneys for the Debtor

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

In re:

Case No.: 22-14422-nmc

MUSCLEPHARM CORPORATION,

Chapter 11

Debtor.

MUSCLEPHARM CORPORATION'S FIRST SET OF INTERROGATORIES TO RYAN DREXLER

MusclePharm Corporation, the debtor and debtor-in-possession in the above-referenced Chapter 11 case (the “**Debtor**”), by and through its counsel of record, Schwartz Law, PLLC, hereby serves this first set of interrogatories (the “**Interrogatories**”) to Ryan Drexler.

INSTRUCTIONS

The following Instructions shall apply to each request:

1. You are instructed to respond in writing and under oath and serve upon the undersigned counsel Your responses to the Requests for Interrogatories set forth below on or before July 14, 2023.

2. The answer to each Interrogatory shall include all knowledge as is within your possession, custody or control and/or in the possession, custody or control of your attorneys, agents, employees, investigators, and others acting on your behalf or under your direction or control and others associated with you.

1 3. You are required to disclose any matter or information, not privileged, which is
2 relevant to the subject matters involved in this pending litigation, whether it relates to the claim
3 or defenses of the parties seeking discovery or the claim or defense of any other party, including
4 the existence, description, nature, custody, condition, and location of any books, Documents, or
5 other tangible things and the identity and location of persons having knowledge of any
6 discoverable matter. The information sought need not be admissible at the trial to be required for
7 disclosure.

8 4. When You are asked to identify a person, you must state that person's full name,
9 present or last known address, present or last known position in business, and affiliation or
10 relationship of this person to you. If this person is a corporation, you shall set forth the State in
11 which it was incorporated.

12 5. If You contend that any Document, Communication, or information which is
13 requested is privileged or otherwise subject to protection, you shall make the claim expressly and
14 shall describe the nature of the documents, communications or things not produced or disclosed
15 in a manner that, without revealing information itself privileged or protected, will enable other
16 parties to this litigation to assess the applicability of the privilege or protection.

17 6. These Requests are intended as continuing discovery, requiring You to supplement
18 Your answers, setting forth any information within the scope of the requests as may be required
19 by You, Your agents, or Your attorneys.

DEFINITIONS

21 1. “Bankruptcy Case” means the Chapter 11 case of *In re MusclePharm Corporation*,
22 Case No. 22-14422-NMC, pending in the United States Bankruptcy Court District of Nevada.

23 2. "Concerning" shall mean relating to, referring to, regarding, describing, evidencing,
24 arising from, or constituting.

25 3. “Committee” means the Official Committee of Unsecured Creditors in the
26 Bankruptcy Case.

27 4. “Communication(s)” shall mean any contact, oral or written, formal or informal, at
28 any time or any place under any circumstance whatsoever whereby any information of any nature

1 was transmitted or transferred, including but not limited to, personal conversation, conferences,
 2 telephone conversations, memoranda, letters, correspondence, reports, e-mail correspondence, text
 3 messaging, instant messaging, social media messages and posts, and publications.
 4 “Communications” shall include the oral and written transmittal of information and includes original
 5 and non-identical copies of all Documents, as defined herein, sent or received by any person, as well
 6 as any Documents reflecting or recording the content of any oral, written or other communications
 7 in any form (including, without limitation, text messages, interoffice and intraoffice memoranda, e-
 8 mail, facsimiles, and other communications).

9 5. “Debtor” shall mean MusclePharm Corporation.

10 6. “Document(s)” includes, without limiting the generality of the meaning, all written
 11 printed, recorded, electronic, digital, or graphic matter, photographic matter or sound reproductions,
 12 however produced, reproduced, or maintained (including on individual computers, servers, back-up
 13 disks, clouds, or other remote data-storage locations or methods), pertaining in any manner to the
 14 subject matter indicated. “Documents” include originals and copies, where originals are unavailable,
 15 and nonidentical copies (whether different from originals by reason of notation made on such copies
 16 or otherwise), and whether in paper, electronic, digital, audio, visual or other format; documents
 17 maintained in digital format shall be produced in native digital format with original metadata and
 18 header information. “Documents” specifically include but are not limited to financial statements and
 19 reports prepared on behalf of You for any third-party, correspondence, Communications, letters,
 20 notes, minutes of meetings, internal memoranda, memoranda, interoffice communications, data base
 21 files, facsimile transmissions, email messages and files including metadata, text messages,
 22 telephone messages, cellular phone logs, voice mail messages, sign-in or log sheets, studies,
 23 analyses, reports, summaries and results of investigations and tests, reviews, contracts, agreements,
 24 working papers, manuals, directives, bulletins, calendars and appointment books, diaries, maps,
 25 charts, photographs, plats, drawings or other graphic representations, logs investigators’ reports or
 26 papers similar to any of the foregoing, however denominated.

27 7. “Empery” means Empery Tax Efficient, LP, in its capacity as collateral agent of the
 28 Secured Noteholders with respect to the Notes (as defined in ECF No. 52).

8. “Trustee Motion” shall mean Your *Motion for the Appointment of a Chapter 11 Trustee* [ECF No. 447], filed in the Bankruptcy Case on April 28, 2023.

9. "You" and "Your" means Ryan Drexler, including his representatives, attorneys, accountants, and all other persons acting on his behalf or under his control.

INTERROGATORIES

INTERROGATORY NO. 1:

7 State each factual basis for Your allegation in the Trustee Motion that “at least one supplier
8 of protein powder who is a member of the Committee has been charging the Debtor above-market
9 prices, requiring the Debtor to raise prices to its customers in a manner that renders the Debtor’s
10 products uncompetitive with similar products.” *See* Trustee Motion, pg. 4 of 34.

11 | INTERROGATORY NO. 2:

12 State each factual basis for Your allegation in the Trustee Motion that “this kind of price
13 gouging from a member of the Committee is an effort to recoup pre-petition claims and losses by
14 charging higher post-petition prices [and] has Empery’s support and encouragement” See
15 Trustee Motion, pg. 5 of 34.

16 | INTERROGATORY NO. 3:

17 State each factual basis for Your allegation in the Trustee Motion that “the Debtor has lost
18 profitable accounts . . .” *See* Trustee Motion, pg. 17 of 34.

19 | INTERROGATORY NO. 4:

20 State each factual basis for Your allegation in the Trustee Motion that “the Debtor is missing
21 out on valuable sales . . .” See Trustee Motion, pg. 17 of 34.

22 | INTERROGATORY NO. 5:

23 State each factual basis for Your allegation in the Trustee Motion that protein component
24 market prices are “plummeting,” including the date on which You have assessed protein component
25 market prices and the sources on which you relied. *See* Trustee Motion, pg. 17 of 34.

26 | INTERROGATORY NO. 6:

27 State each factual basis for Your allegation in the Trustee Motion that “[f]unds that were to
28 be used to build inventory appear to have been diverted to professional fees[,]” including the identity

1 of the intended recipient of the funds, the amount of the funds You contend were diverted, and the
2 date of the alleged diversion. *See Trustee Motion*, pg. 17 of 34.

3 **INTERROGATORY NO. 7:**

4 State each factual basis for Your allegation in the Trustee Motion that “Debtor has misled
5 the Court and parties by failing to purchase materials or otherwise expand the business, and appear
6 not to have spent any money building their inventory since the case began.” *See Trustee Motion*,
7 pg. 18 of 34.

8 **INTERROGATORY NO. 8**

9 State each factual basis for Your allegation in the Trustee Motion that there are “alternative
10 sources of cheaper protein . . . ,” including the name of each alternative source. *See Trustee Motion*,
11 pg. 17 of 34.

12 **INTERROGATORY NO. 9:**

13 Identify the discovery obtained through Rule 2004 examinations sought by White Winston,
14 Empery, and You that “has already started expensive litigation among the parties and will soon raise
15 further disputes with the Debtor over the claims and causes of action to which, respectively, the
16 Debtor should object or otherwise prosecute” as alleged in Your Trustee Motion. *See Trustee*
17 Motion, pg. 16-17 of 34.

18 **INTERROGATORY NO. 10:**

19 Describe the processes, controls, and procedures, including internal control over financial
20 reporting and disclosure controls and procedures, that the Debtor had in place from the first quarter
21 of 2021 through the Petition Date to provide investors with assurance that the Debtor’s accounting
22 and public reports were accurate.

23 **INTERROGATORY NO. 11:**

24 Identify the “information received from other sources” that You refer to in Your *Objection*
25 to *Emergency Motion to Enforce Intercreditor and Subordination Agreement Under Section 510(a)*
26 of the *Bankruptcy Code* [ECF No. 506], including the name of the source and the nature and form
27 of the information.

1 **INTERROGATORY NO. 12:**

2 Describe the information that You allege indicates that a regular course of communications
3 between and among Empery, JW Nutritional LLC, the Debtor's chief executive officer, and the
4 Debtor's Independent Director will show a deliberate restraint of sales of Debtor's products in order
5 to artificially depress the value of the Debtor's business and reduce the proceeds that might be
6 received in an auction sale, as alleged in Your *Objection to Emergency Motion to Enforce*
7 *Intercreditor and Subordination Agreement Under Section 510(a) of the Bankruptcy Code* [ECF
8 No. 506].

9 **INTERROGATORY NO. 13:**

10 Describe the factual circumstance Concerning the turnover of principal accounting officers
11 of MusclePharm in the third quarter of 2017.

12 **INTERROGATORY NO. 14:**

13 Describe MusclePharm's process for recognizing revenue on inventory which has been
14 temporarily stored off-site in trailers rather than being shipped to MusclePharm's customers prior
15 to year-end.

16 **INTERROGATORY NO. 15:**

17 State each factual basis for the statement in MusclePharm's Form 10-Q filed on May 16,
18 2022, that:

19 The Company has deficiencies in the design and operation of its internal
20 controls in the financial processes related to the accounting for cash, accounts
21 receivable, accounts payable, inventory, accrued liabilities, income taxes, debt,
22 equity, revenue, costs of sales, stock-based compensation, and expenses
23 classification. In addition, the Company has insufficient controls over the
financial close and reporting process, including account reconciliations and
preparation and review of financial statements and related disclosures.

24 **INTERROGATORY NO. 16:**

25 Identify each person or entity You believe has discoverable information Concerning Your
26 allegations in the Trustee Motion.

27 ///

28 ///

1 Dated: July 5, 2023.

2 SCHWARTZ LAW, PLLC

3 By: /s/ Gabrielle A. Hamm

4 Samuel A. Schwartz, Esq.

5 Gabrielle A. Hamm, Esq.

6 601 East Bridger Avenue

7 Las Vegas, NV 89101

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Attorneys for the Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via email on July 5, 2023, to the following:

Michael P. Richman, Esq., mrichman@steinhilberswanson.com
Brian D. Shapiro, Esq., brian@brianshiapirolaw.com

Jason H. Rosell, Esq., jrosell@pszjlaw.com
John D. Fiero, Esq., jrosell@pszjlaw.com
Matthew C. Zirzow, Esq., mzirzow@lzlawnv.com

Gregory E. Garman, Esq., ggarman@gtg.legal
William M. Noall, Esq., wnoall@gtg.legal
Teresa M. Pilatowicz, Esq., tpilatowicz@gtg.legal
Dylan T. Ciciliano, Esq., dciciliano@gtg.legal

Shara L. Larson, Esq., shara@ghandilaw.com

By: /s/ Gabrielle A. Hamm
Gabrielle A. Hamm
SCHWARTZ LAW, PLLC

1 Samuel A. Schwartz, Esq.
2 Nevada Bar No. 10985
3 saschwartz@nvfirm.com
4 Gabrielle A. Hamm, Esq.
5 Nevada Bar No. 11588
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7 SCHWARTZ LAW, PLLC
8 601 East Bridger Avenue
9 Las Vegas, NV 89101
10 Telephone: 702.385.5544
11 Facsimile: 702.442.9887

8 | Attorneys for the Debtor

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA**

11 | In re:

Case No.: 22-14422-nmc

12 MUSCLEPHARM CORPORATION,

Chapter 11

Debtor.

MUSCLEPHARM CORPORATION'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO RYAN DREXLER

17 MusclePharm Corporation, the debtor and debtor-in-possession in the above-referenced
18 Chapter 11 case (the “**Debtor**”), by and through its counsel of record, Schwartz Law, PLLC, hereby
19 serves this first set of requests for the production of documents (the “**Requests**”) to Ryan Drexler.

INSTRUCTIONS

21 The following Instructions shall apply to each request:

22 1. You shall produce all responsive Documents and Communications no later than July
23 14, 2023, in electronic format to ghamm@nvvfirm.com with a copy to cgrill@nvvfirm.com and
24 msturm@nvvfirm.com.

25 2. You are instructed to serve any written objections to the Requests on or before July
26 10, 2023

27 3. You are instructed to produce all Documents within Your possession, custody or
28 control. For purposes of this Request, a Document shall be deemed within Your possession, custody

1 or control if it is in Your physical possession or custody or You have the legal right to obtain it.
2 Thus, this Request reaches not only all Documents within the possession or custody (and Your
3 agents or employees) but also all Documents within the possession or custody of people or entities
4 over whom You have control, such as secretaries, subordinates associated companies, and others
5 acting on your behalf or under your direction or control and others associated with you.

6 4. You are required to disclose any matter or information, not privileged, which is
7 relevant to the subject matters involved in this pending litigation, whether it relates to the claim or
8 defenses of the parties seeking discovery or the claim or defense of any other party, including the
9 existence, description, nature, custody, condition, and location of any books, documents, or other
10 tangible things and the identity and location of persons having knowledge of any discoverable
11 matter. The information sought need not be admissible at the trial to be required for disclosure.

12 5. All documents that respond, in whole or in part, to any part or clause of any paragraph
13 of these document requests shall be produced in their entirety, including all attachments and
14 enclosures. Only one copy need be produced of documents that are responsive to more than one
15 paragraph or are identical except for the person to whom it is addressed if you indicate the persons
16 or group of persons to whom such documents were distributed. Documents that in their original
17 condition were stapled, clipped, or otherwise fastened together shall be produced in such form.
18 Please identify the documents called for by each paragraph and the paragraph to which such
19 documents respond, and if any document is responsive to more than one request, indicate each
20 request to which it responds.

21 6. All electronic Documents should be produced in their native format, including any
22 necessary passwords, except Documents that are not in a reasonably useable form in their native
23 format shall be translated to a reasonably useable form.

24 7. You are under a duty to seasonably to supplement any response to these Requests for
25 which you learn that the response is in some material respect incomplete or incorrect and if the
26 additional or corrective information has not otherwise been made known to us during the discovery
27 process or in writing.

28

1 8. Unless otherwise stated in a Request, these Requests seek Documents created, edited,
2 viewed, printed, transmitted, received, or relied upon from the period of January 1, 2022, through
3 the present.

4 9. For any document responsive to these document requests which is known to have
5 been destroyed or lost, or is otherwise unavailable and not within Your possession, custody or
6 control, You are instructed to provide the following information:

7 a. Identify the author;

8 b. Identify the addressee and/or recipients, including anyone believed to know
9 the contents;

10 c. State the Date the Documents was created;

11 d. State the number of pages;

12 e. Describe the subject matter in as much detail and with as much particularity
13 as possible;

14 f. Explain in detail the events leading to the destruction or loss, or the reasons
15 for the unavailability of such document, including the location of such document when last
16 in your possession, custody, or control, and the date and manner of its disposition;

17 g. Identify the person or entity believed by You to have possession or custody
18 of the Documents both at this time and during any prior period of time; and

19 h. Identify each person or entity believed by You to have possession or custody
20 of any copies of the Documents at this time; and

21 i. Describe in detail and with particularity the efforts, if any, You have made to
22 obtain possession or custody of the Documents.

23 10. If You contend that Documents exist that would be responsive to these requests but
24 for the fact that they are believed to be protected from disclosure and production due to the
25 application of a privilege recognized under otherwise applicable or governing law, an appropriate,
26 rule-compliant privilege log must be provided with the express understanding that any claim(s) of
27 privilege, work-product immunity protection, or similar claim remains subject to challenge and
28 ultimate determination by a court of competent jurisdiction.

1 11. An appropriate, rule-compliant privilege log will identify each purportedly
2 privileged Document by author, addressee, date, number of pages, and subject matter, specify the
3 nature and basis of the claimed privilege and the paragraph of this request for documents to which
4 the Document is responsive; and identify each person to whom the document or its contents, or an
5 part thereof, has been disclosed.

6 12. If You contend that only a portion of a Document described in the schedule is
7 privileged or otherwise not subject to production, You are instructed to produce a copy of the entire
8 Document redacting that portion deemed privileged or otherwise not subject to production. To the
9 extent the redacted portion of the Document does not do so, You are instructed to provide an
10 appropriate, rule-compliant privilege log that would be provided if the entire document were not
11 produced.

DEFINITIONS

13 1. “Bankruptcy Case” means the Chapter 11 case of *In re MusclePharm Corporation*,
14 Case No. 22-14422-NMC, pending in the United States Bankruptcy Court District of Nevada.

15 2. "Concerning" shall mean relating to, referring to, regarding, describing, evidencing,
16 arising from, or constituting.

17 3. “Committee” means the Official Committee of Unsecured Creditors in the
18 Bankruptcy Case.

19 4. “Communication(s)” shall mean any contact, oral or written, formal or informal, at
20 any time or any place under any circumstance whatsoever whereby any information of any nature
21 was transmitted or transferred, including but not limited to, personal conversation, conferences,
22 telephone conversations, memoranda, letters, correspondence, reports, e-mail correspondence, text
23 messaging, instant messaging, social media messages and posts, and publications.
24 “Communications” shall include the oral and written transmittal of information and includes original
25 and non-identical copies of all Documents, as defined herein, sent or received by any person, as well
26 as any Documents reflecting or recording the content of any oral, written or other communications
27 in any form (including, without limitation, text messages, interoffice and intraoffice memoranda, e-
28 mail, facsimiles, and other communications).

1 5. “Debtor” shall mean MusclePharm Corporation.

2 6. “Document(s)” includes, without limiting the generality of the meaning, all written
 3 printed, recorded, electronic, digital, or graphic matter, photographic matter or sound reproductions,
 4 however produced, reproduced, or maintained (including on individual computers, servers, back-up
 5 disks, clouds, or other remote data-storage locations or methods), pertaining in any manner to the
 6 subject matter indicated. “Documents” include originals and copies, where originals are unavailable,
 7 and nonidentical copies (whether different from originals by reason of notation made on such copies
 8 or otherwise), and whether in paper, electronic, digital, audio, visual or other format; documents
 9 maintained in digital format shall be produced in native digital format with original metadata and
 10 header information. “Documents” specifically include but are not limited to financial statements and
 11 reports prepared on behalf of You for any third-party, correspondence, Communications, letters,
 12 notes, minutes of meetings, internal memoranda, memoranda, interoffice communications, data base
 13 files, facsimile transmissions, email messages and files including metadata, text messages,
 14 telephone messages, cellular phone logs, voice mail messages, sign-in or log sheets, studies,
 15 analyses, reports, summaries and results of investigations and tests, reviews, contracts, agreements,
 16 working papers, manuals, directives, bulletins, calendars and appointment books, diaries, maps,
 17 charts, photographs, plats, drawings or other graphic representations, logs investigators’ reports or
 18 papers similar to any of the foregoing, however denominated.

19 7. “Empery” means Empery Tax Efficient, LP, in its capacity as collateral agent of the
 20 Secured Noteholders with respect to the Notes (as defined in ECF No. 52).

21 8. “Trustee Motion” shall mean Your *Motion for the Appointment of a Chapter 11*
 22 *Trustee* [ECF No. 447], filed in the Bankruptcy Case on April 28, 2023.

23 9. “You” and “Your” means Ryan Drexler, including his representatives, attorneys,
 24 accountants, and all other persons acting on his behalf or under his control.

25 DOCUMENT REQUESTS

26 REQUEST NO. 1:

27 Produce all Documents and Communications Concerning Your allegation in the Trustee
 28 Motion that “at least one supplier of protein powder who is a member of the Committee has been

1 charging the Debtor above-market prices, requiring the Debtor to raise prices to its customers in a
 2 manner that renders the Debtor's products uncompetitive with similar products." *See* Trustee
 3 Motion, pg. 4 of 34.

4 **REQUEST NO. 2:**

5 Produce all Documents and Communications Concerning Your allegation in the Trustee
 6 Motion that "at least one member of the Committee [is complicit] in Empery's objectives, and . . .
 7 the member is serving those objectives by charging the Debtor above-market prices for its protein
 8 inputs . . ." *See* Trustee Motion, pg. 16 of 34.

9 **REQUEST NO. 3:**

10 Produce all Documents and Communications Concerning Your allegation in the Trustee
 11 Motion that the "Debtor's management has been allowing at least one Committee member to
 12 overcharge the Debtor for the component protein it needs to manufacture and sell its products . . ."
 13 *See* Trustee Motion, pg. 17 of 34.

14 **REQUEST NO. 4:**

15 Produce all Documents and Communications Concerning Your allegation in the Trustee
 16 Motion that "the Debtor has allowed at least one Committee member, along with Empery, to depress
 17 the Debtor's value and create the environment for a low-value 363 sale of the Debtor's assets." *See*
 18 Trustee Motion, pg. 17 of 34.

19 **REQUEST NO. 5:**

20 Produce all Documents and Communications Concerning Your allegation in the Trustee
 21 Motion that "this kind of price gouging from a member of the Committee is an effort to recoup pre-
 22 petition claims and losses by charging higher post-petition prices [and] has Empery's support and
 23 encouragement . . ." *See* Trustee Motion, pg. 5 of 34.

24 **REQUEST NO. 6:**

25 Produce all Documents and Communications Concerning Your allegation that "the Debtor
 26 has lost profitable accounts . . ." *See* Trustee Motion, pg. 17 of 34.

27

28

1 **REQUEST NO. 7:**

2 Produce all Documents and Communications Concerning Your allegation that “the Debtor
3 is missing out on valuable sales . . .” *See* Trustee Motion, pg. 17 of 34.

4 **REQUEST NO. 8:**

5 Produce all Documents and Communications Concerning Your allegation in the Trustee
6 Motion that protein component market prices are “plummeting,” including the sources on which
7 you relied for protein component market prices. *See* Trustee Motion, pg. 17 of 34.

8 **REQUEST NO. 9:**

9 Produce all Documents and Communications Concerning Your allegation in the Trustee
10 Motion that the Debtor has not taken advantage of “alternative sources of cheaper protein to support
11 more profitable sales” including Documents and Communications reflecting the identity of the
12 supplier, pricing, and terms of sale for each alleged alternative source. *See* Trustee Motion, pg. 17
13 of 34.

14 **REQUEST NO. 10:**

15 Produce all Documents and Communications Concerning Your allegation in the Trustee
16 Motion that “[f]unds that were to be used to build inventory appear to have been diverted to
17 professional fees.” *See* Trustee Motion, pg. 17 of 34.

18 **REQUEST NO. 11:**

19 Produce all Documents and Communications Concerning Your allegation in the Trustee
20 Motion that “Debtor has misled the Court and parties by failing to purchase materials or otherwise
21 expand the business, and appear not to have spent any money building their inventory since the case
22 began.” *See* Trustee Motion, pg. 18 of 34.

23 **REQUEST NO. 12:**

24 Produce the discovery obtained through Rule 2004 examinations sought by White Winston,
25 Empery, and You that “has already started expensive litigation among the parties and will soon raise
26 further disputes with the Debtor over the claims and causes of action to which, respectively, the
27 Debtor should object or otherwise prosecute” as alleged in Your Trustee Motion. *See* Trustee
28 Motion, pg. 16-17 of 34.

1 **REQUEST NO. 13:**

2 Produce all Communications from January 1, 2023 to the present between You or any person
3 acting on Your behalf and Will Hovi.

4 **REQUEST NO. 14:**

5 Produce all Communications from January 1, 2023 to the present between You or any person
6 acting on Your behalf and Jason Keenan.

7 **REQUEST NO. 15:**

8 Produce all Communications from January 1, 2023 to the present between You or any person
9 acting on Your behalf and Eric Hillman.

10 **REQUEST NO. 16:**

11 Produce all Communications from January 1, 2023 to the present between You or any person
12 acting on Your behalf and any officer, director, or employee of the Debtor that has not been
13 produced in response to a preceding Request.

14 **REQUEST NO. 17:**

15 Produce all Communications from January 1, 2023 to the present between You or any person
16 acting on Your behalf and JW Nutritional LLC or any owner, member, principal, officer, director,
17 representative, or employee thereof, including Jesse Windrix and Peter Jungsberger.

18 **REQUEST NO. 18:**

19 Produce all Communications from January 1, 2023 to the present between You or any person
20 acting on Your behalf and MHF OpcO, LLC or any owner, member, principal, officer, director,
21 representative, or employee thereof, including Brian Slater.

22 **REQUEST NO. 19:**

23 Produce all Communications from January 1, 2023 to the present between You or any person
24 acting on Your behalf and Empery or any owner, member, principal, officer, director, representative,
25 or employee thereof, including Tim Silver and Ryan Lane.

26

27

28

1 **REQUEST NO. 20:**

2 Produce all Communications from January 1, 2023 and the present between You or any
3 person acting on Your behalf and any vendor or supplier to the Debtor or any owner, member,
4 principal, officer, director, representative, or employee thereof.

5 **REQUEST NO. 21:**

6 Produce all Communications from January 1, 2023 and the present between You or any
7 person acting on Your behalf and any competitor of the Debtor or any owner, member, principal,
8 officer, director, representative, or employee thereof.

9 **REQUEST NO. 22:**

10 Produce all Documents and Communications sent by, or received from, the “other sources”
11 You refer to in Your *Objection to Emergency Motion to Enforce Intercreditor and Subordination*
12 *Agreement Under Section 510(a) of the Bankruptcy Code* [ECF No. 506].

13 **REQUEST NO. 23:**

14 Produce all Documents and Communications between and among Empery, JW Nutritional
15 LLC, the Debtor’s chief executive officer, and the Debtor’s Independent Director that “will show a
16 deliberate restraint of sales of Debtor’s products in order to artificially depress the value of the
17 Debtor’s business and reduce the proceeds that might be received in an auction sale,” as alleged in
18 Your *Objection to Emergency Motion to Enforce Intercreditor and Subordination Agreement Under*
19 *Section 510(a) of the Bankruptcy Code* [ECF No. 506].

20 **REQUEST NO. 24:**

21 Produce all Documents and Communications which contain, describe, or discuss any part of
22 the processes, controls, and procedures, including internal control over financial reporting and
23 disclosure controls and procedures, that the Debtor had in place from the first quarter of 2021
24 through the Petition Date to provide investors with assurance that the Debtor’s accounting and
25 public reports were accurate.

26 **REQUEST NO. 25:**

27 Produce all Documents and Communications Concerning the design of, implementation of,
28 or compliance with the processes, controls, and procedures referenced in the preceding Request.

1 **REQUEST NO. 26:**

2 Produce all Documents and Communications discussed or relied upon in connection with
3 the following statement in MusclePharm's Form 10-Q filed on May 16, 2022:

4 The Company has deficiencies in the design and operation of its internal
5 controls in the financial processes related to the accounting for cash, accounts
6 receivable, accounts payable, inventory, accrued liabilities, income taxes, debt,
7 equity, revenue, costs of sales, stock-based compensation, and expenses
8 classification. In addition, the Company has insufficient controls over the
financial close and reporting process, including account reconciliations and
preparation and review of financial statements and related disclosures.

9 **REQUEST NO. 27:**

10 Produce all Documents and Communications Concerning the turnover of principal
11 accounting officers of MusclePharm in the third quarter of 2017 and MusclePharm's disclosure
12 thereof.

13 **REQUEST NO. 28:**

14 Produce all Documents and Communications Concerning MusclePharm's process for
15 recognizing revenue on inventory which has been temporarily stored off-site in trailers rather than
16 being shipped to MusclePharm's customers prior to year-end.

17 **REQUEST NO. 29:**

18 Produce all Documents and Communications You may use to support Your allegations in
19 the Trustee Motion.

20 Dated: July 5, 2023.

21 SCHWARTZ LAW, PLLC

22 By: /s/ Gabrielle A. Hamm
23 Samuel A. Schwartz, Esq.
24 Gabrielle A. Hamm, Esq.
601 East Bridger Avenue
25 Las Vegas, NV 89101

26 *Attorneys for the Debtor*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via email on July 5, 2023, to the following:

Michael P. Richman, Esq., mrichman@steinhilberswanson.com
Brian D. Shapiro, Esq., brian@brianshiapirolaw.com

Jason H. Rosell, Esq., jrosell@pszjlaw.com
John D. Fiero, Esq., jrosell@pszjlaw.com
Matthew C. Zirzow, Esq., mzirzow@lzlawnv.com

Gregory E. Garman, Esq., ggarman@gtg.legal
William M. Noall, Esq., wnoall@gtg.legal
Teresa M. Pilatowicz, Esq., tpilatowicz@gtg.legal
Dylan T. Ciciliano, Esq., dciciliano@gtg.legal

Shara L. Larson, Esq., shara@ghandilaw.com

By: /s/ Gabrielle A. Hamm
Gabrielle A. Hamm
SCHWARTZ LAW, PLLC

EXHIBIT B

EXHIBIT B

1 GARMAN TURNER GORDON LLP
2 GREGORY E. GARMAN
3 Nevada Bar No. 6665
4 E-mail: ggarman@gtg.legal
5 WILLIAM M. NOALL
6 Nevada Bar No. 3549
7 E-mail: wnoall@gtg.legal
8 TERESA M. PILATOWICZ
9 Nevada Bar No 9605
10 E-mail: tpilatowicz@gtg.legal
11 DYLAN T. CICILIANO
12 Nevada Bar No. 12348
13 E-mail: dciciliano@gtg.legal
14 7251 Amigo Street, Suite 210
15 Las Vegas, Nevada 89119
16 Telephone (725) 777-3000
17 Facsimile (725) 777-3112
18 *Attorneys for Empery Tax Efficient, LP as
19 Agent and Collateral Agent for certain
20 Secured Noteholders*

21 **UNITED STATES BANKRUPTCY COURT**

22 **DISTRICT OF NEVADA**

23 In re: Case No.: 22-14422-NMC
24 MUSCLEPHARM CORPORATION, Chapter 11
25 Debtor.

26 **EMPERY TAX EFFICIENT, LP'S FIRST SET OF INTERROGATORIES TO RYAN
27 DREXLER**

28 **PLEASE TAKE NOTICE** that the Empery Tax Efficient, LP (“Empery”), as agent and
19 collateral agent for certain secured noteholders, by and through its counsel, Garman Turner Gordon
20 LLP, pursuant to Rule 33 of the Federal Rules of Civil Procedure (“FRCP”), as made applicable
21 by Rules 7033 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), requests Ryan
22 Drexler answer, under oath, the following interrogatories on or before thirty (30) days after service
23 of these interrogatories (the “Interrogatories”).

24 Your response should be verified pursuant to FRCP 33(b)(5) and delivered to Dylan T.
25 Ciciliano, Esq. at 7251 Amigo Street, Suite 210, Las Vegas, Nevada 89119 and by email to
26 dciciliano@gtg.legal.

27 Please note that these Interrogatories are continuing in nature and require supplemental

answers if additional information is obtained prior to the trial in this matter.

DEFINITIONS

As used in these Interrogatories, the following words shall have the following meanings:

1. “Affiliate” shall be ascribed the definition set forth in 11 U.S.C. § 101(2).
2. “Communication(s)” shall mean, without limitation, any transmittal, conveyance
change of a word, statement, fact, thing, idea, document, instruction, information, demand,
on or other information by any medium, whether by written, oral or other means, including
but limited to personal conversations, written correspondence, memoranda, letters, reports,
notations, electronic communications, text messaging, instant messaging, messages via social
and electronic mail.
3. “Date” means the exact day, month, and year, if known, or if not known, Your best
imimation thereof. Exact dates shall be given in all answers except where it is explicitly
ed than an approximate date may be given.
4. “Document” is intended to be as broad as it is used in Federal Rules of Civil
ure (“FRCP”) 26 and 34, and includes, without limitation:

- a. the original (or an identical duplicate if the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any kind of physical media;¹
- b. any printed, typewritten, handwritten, electronic, or otherwise recorded matter of whatever character of communications, letters, correspondence, electronic mail, text messages, memoranda, notes, Post-Its, media releases or articles, photographs, tape or sound recordings, contracts, agreements, telephone records, diaries, desk calendars, appointment calendar, group scheduler calendars, statements, reports, journal, minutes, working paper, financial report, accounting report, work papers, facsimile, facsimile transmission, drafts, logs, chart, graph, index, directory, scheduling data, databases, spreadsheets, presentations, word processed documents, bulletins, design schedules, supplemental instructions, time cards, drawings, shop drawings, progress payments, progress schedules,

¹ Physical media includes, but is not limited to, paper media, photographic media (including pictures, films, slides and microfilm), phonographic media, magnetic media (including, but not limited to hard drives, floppy disks, compact disks, and magnetic tapes of any kind), computer memory, optical media, magneto-optical media, and other physical media on which notations or marking of any kind can be affixed.

1 estimates, equipment time cards, design calculations, design meeting
 2 minutes, coordination meeting minutes, and material similar to any of the
 3 foregoing, however denominated and to whomever addressed, computer
 4 directory, computer disk, computer tape, or any written, printed, typed,
 5 punched, taped, filmed, or graphic matter however produced or reproduced.
 6 Documents also include the file, folder tabs, and labels appended to or
 7 containing any documents.

8 c. For the avoidance of doubt, electronically-stored information with all
 9 metadata intact shall be produced whenever available in the format
 10 described below.

11 5. “Entity” includes, without limiting the generality of its meaning, every
 12 corporation, partnership, association, limited liability company, joint venture and professional
 13 business entity or any iteration, subsidiary, or affiliate thereof.

14 6. “Insider” shall be ascribed the definition set forth in 11 U.S.C. § 101(31).

15 7. “Person” shall mean any natural person, trust, Entity, association of Entities and/or
 16 natural persons, and/or governmental body.

17 8. “Relate” or “relating to” means constituting, comprising, containing, setting forth,
 18 showing, disclosing, describing, explaining, summarizing, concerning, or referring to directly or
 19 indirectly.

20 9. “Relevant to” has the same meaning that it has in FRCP 26(b)(1) incorporated by
 21 Bankruptcy Rule 7026.

22 10. “You” and “Your” shall mean Ryan Drexler, and Your agents, servants, employees,
 23 attorneys, representatives, predecessors, or any other person over which You have control or have
 24 a superior right to compel to do an act or produce an item or information and specifically including,
 25 but not limited to: (i) any Entity of which You are an officer, director, manager, member,
 26 shareholder or in which You have or had any ownership or equity interest (contingent or
 27 otherwise); and (ii) any trust or similar device in which You are a settlor, trustee, co-trustee, trust
 28 protector, or beneficiary or in which You have any interest (contingent or otherwise).

INSTRUCTIONS

1. In answering these Interrogatories, You are requested to furnish all information
 2 available at the time the responses are made, including information in the possession of Your

1 attorneys or accountants, not merely information known to Your agents, representatives, and
 2 employees.

3 2. These interrogatories are continuing to the full extent permitted under the Federal
 4 Rules of Civil Procedure. You have a continuing obligation to update the information in Your
 5 responses as You acquire additional information. If, after serving Your responses, You obtain or
 6 become aware of any further responsive information, You are requested to supplemental Your
 7 responses, providing such supplemental responses to the attorneys listed above.

8 3. Where knowledge and information in the possession of a party is requested, such
 9 requests included knowledge or information in the possession of the party's agents, members,
 10 affiliates, employees, officers, representatives, consultants, predecessors and, unless privileged,
 11 the party's attorneys and accountants, and all other persons acting or purported to act on the party's
 12 behalf.

13 4. If any of the information contained in the answers to these Interrogatories is not
 14 within Your personal knowledge, so state. The answers to these Interrogatories should identify
 15 every Person, Document, and Communication upon which You rely for the information contained
 16 in the answer not based solely on Your own personal knowledge.

17 5. If You cannot answer any portion of the following Interrogatories in full, after
 18 exercising due diligence to secure the information, so state and answer to the extent possible,
 19 specifying Your inability to answer the remainder and stating whatever information or knowledge
 20 You have concerning the unanswered portion.

21 6. In the event that any Document called for by these Interrogatories has been
 22 destroyed or discarded, please Identify the destroyed or discarded Document by:

- 23 (a) The author(s), addressee(s), and indicated or blind copy(s);
- 24 (b) The Document's date, number of pages, and attachments or appendices;
- 25 (c) The Document's subject matter;
- 26 (d) The date of destruction or discard;
- 27 (e) The manner of destruction or discard;
- 28 (f) The reason for destruction or discard;

(g) The Persons who were authorized to carry out such destruction or discard; and

(h) Whether any copies of the Document presently exist, and, if so, the name of the custodian of each copy.

5 7. If You assert privilege as a ground for failing to answer any interrogatory, respond
6 to that part of each such interrogatory that, in Your view, does not seek allegedly privileged
7 information or communications. For each interrogatory, or portion thereof, for which You claim
8 a privilege, describe the factual basis for the claim of privilege in sufficient detail to permit
9 adjudication of the validity of that claim and what specific material or information You are
10 withholding on that basis.

11 8. All responses which refer back to previously stated responses or answers (“*supra*”)
12 shall explicitly designate the number and, if applicable, the subsection of each and every previous
13 response or answer relied upon.

14 9. The present tense of a verb includes past tense and vice versa, use of the singular
15 includes the plural and vice versa, and use of the masculine gender includes the feminine gender
16 and vice versa.

17 10. As used in these Interrogatories, the terms "any," "all," "each," "and," "or," and
18 "and/or" shall be construed as appropriate to bring within the scope of these Interrogatories which
19 might otherwise be interpreted beyond their scope.

20 11. As used in these Interrogatories, the term "and" as well as "or" shall be construed
21 either disjunctively or conjunctively, as necessary, to bring within the scope of these
22 Interrogatories any information which might otherwise be construed to be outside their scope.

INTERROGATORIES

24 | INTERROGATORY NO. 1:

25 Describe each and every way you contend that Empery is “misusing its power,” as alleged
26 on p. 3:25 of ECF No. 447.

27 || INTERROGATORY NO. 2:

28 Describe the facts and circumstances supporting or evidencing Your allegation that "at

1 least one supplier of protein powder who is a member of the Committee has been charging the
2 Debtor above-market prices,” including but not limited to:

- 3 1) The identity of “the member of the Committee”;
- 4 2) The price being charged to Debtor;
- 5 3) The market price for protein powder; and
- 6 4) The basis or source of Your knowledge of the allegation.

7 **INTERROGATORY NO. 3:**

8 Identify the price of all competing products that you contend “renders the Debtor’s
9 products uncompetitive.”

10 **INTERROGATORY NO. 4:**

11 Identify the accounts You contend Debtor has lost since December 14, 2022, and the
12 circumstances that led to the loss of the account, including the basis of your knowledge.

13 **INTERROGATORY NO. 5:**

14 Describe the factual basis for your assertion that “this kind of price gouging from a member
15 of the Committee is an effort to recoup pre-petition claims and losses.”

16 **INTERROGATORY NO. 6:**

17 Identify and describe any complaints received from Costco related to Debtor’s products
18 before December 14, 2022, including but not limited to, the nature of the complaints and the
19 resolution of the complaint.

20 **INTERROGATORY NO. 7:**

21 Identify when You or Your counsel became aware that Mr. Rubin of Force Ten Partners,
22 LLC was being considered as an Independent Director.

23 **INTERROGATORY NO. 8:**

24 Identify when You or Your counsel became aware that Mr. Rubin had any previous
25 relationship with Garman Turner Gordon, LLP or its attorneys, including who became aware and
26 their understanding of the nature of any relationship.

27 **INTERROGATORY NO. 9:**

28 Identify when You or Your counsel became aware that Mr. Rubin had any previous

1 relationship with Schwartz Law PLLC or its attorneys, including who became aware and their
2 understanding of the nature of any relationship.

3 **INTERROGATORY NO. 10:**

4 Describe any evidence or facts supporting Your allegation that Empery has acted to
5 “depress the Debtor’s value and create the environment for a low-value 363 sale of the Debtor’s
6 assets.”

7 **INTERROGATORY NO. 11:**

8 Describe all “information and belief” as used by you in ¶5 of ECF No. 448, including but
9 not limited to the specific information or facts underlying your belief and the source of information.

10 **INTERROGATORY NO. 12:**

11 Describe all communications You had with any party related to DIP financing for Debtor.

12 **INTERROGATORY NO. 13:**

13 As it pertains to the Debtor’s bankruptcy case, identify the date of any settlement offers
14 made by You to any other party to the bankruptcy proceedings and the terms of those settlement
15 offers.

16 **INTERROGATORY NO. 14:**

17 Describe all “information and belief” as used by you in ¶6 of ECF No. 448, including but
18 not limited to the specific information or facts underlying your belief and the source of information.

19 **INTERROGATORY NO. 15:**

20 Describe all “information and belief” as used by you in ¶7 of ECF No. 448, including but
21 not limited to the specific information or facts underlying your belief and the source of information.

22 **INTERROGATORY NO. 16:**

23 Describe in detail all disputes that Debtor had with vendors when You were Debtor’s CEO,
24 including but not limited to the identity of the vendor, the nature of the dispute, and the resolution
25 of the dispute.

26 **INTERROGATORY NO. 17:**

27 When did you become aware of the allegations against defendants Brian H. Casutto,
28 Matthew J. Zucco, and Kevin R. Harris, as alleged in Case No. 23-cv-05104?

INTERROGATORY NO. 18:

Identify any communications sent by you or at your direction or knowledge to Amy Lane.

INTERROGATORY NO. 19:

Identify any communications sent by you or at your direction or knowledge to the Westport School District.

INTERROGATORY NO. 20:

Describe any communications You, including but not limited to Your agents and counsel, had with White Winston Select Asset Funds, LLC regarding the Complaint or the allegations contained in the complaint in Case No. 22-14422-nmc, either before or after the filing of the complaint.

INTERROGATORY NO. 21:

Describe and specifically identify any and all decisions or actions taken by Nick Rubin that You contend were improperly influenced in any way by Empery or its counsel, including but not limited to the specific decision or action, and how that decision or action was impacted by Empery or its counsel.

DATED this 5th day of July, 2023.

GARMAN TURNER GORDON LLP

/s/ Dylan T. Ciciliano
GREGORY E. GARMAN
WILLIAM M. NOALL
TERESA M. PILATOWICZ
DYLAN T. CICILIANO
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
*Attorneys for Empery Tax Effi
Agent and Collateral Agent fo
Secured Noteholders*

1 GARMAN TURNER GORDON LLP
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3 Nevada Bar No. 6665
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5 WILLIAM M. NOALL
6 Nevada Bar No. 3549
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9 Nevada Bar No 9605
10 E-mail: tpilatowicz@gtg.legal
11 DYLAN T. CICILIANO
12 Nevada Bar No. 12348
13 E-mail: dciciliano@gtg.legal
14 7251 Amigo Street, Suite 210
15 Las Vegas, Nevada 89119
16 Telephone (725) 777-3000
17 Facsimile (725) 777-3112
18 *Attorneys for Empery Tax Efficient, LP as
Agent and Collateral Agent for certain
Secured Noteholders*

19 **UNITED STATES BANKRUPTCY COURT**

20 **DISTRICT OF NEVADA**

21 In re: Case No.: 22-14422-NMC
22 MUSCLEPHARM CORPORATION, Chapter 11
23 Debtor.

24 **EMPERY TAX EFFICIENT, LP'S FIRST SET OF REQUESTS FOR PRODUCTION OF**
DOCUMENTS TO RYAN DREXLER

25 **PLEASE TAKE NOTICE** that the Empery Tax Efficient, LP (“Empery”), as agent and
26 collateral agent for certain secured noteholders, by and through its counsel, Garman Turner Gordon
27 LLP, pursuant to Rule 34 of the Federal Rules of Civil Procedure (“FRCP”), as made applicable
28 by Rules 7034 and 9014 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”),
propounds upon Ryan Drexler this first request for the production of documents (“Requests”).

29 Responsive documents and any written responses or objections should be delivered to
30 Dylan T. Ciciliano, Esq. of Garman Turner Gordon LLP at 7251 Amigo Street, Suite 210, Las
31 Vegas, Nevada 89119, and by email to dciciliano@gtg.legal, pursuant to FRCP 34.

32 These Requests are continuing in nature and require supplemental answers if additional
33 information is obtained prior to the trial in this matter.

DEFINITIONS

As used in these Interrogatories, the following words shall have the following meanings:

1. “Affiliate” shall be ascribed the definition set forth in 11 U.S.C. § 101(2).
2. “Communication(s)” shall mean, without limitation, any transmittal, conveyance change of a word, statement, fact, thing, idea, document, instruction, information, demand, on or other information by any medium, whether by written, oral or other means, including t limited to personal conversations, written correspondence, memoranda, letters, reports, ations, electronic communications, text messaging, instant messaging, messages via social and electronic mail.
3. “Date” means the exact day, month, and year, if known, or if not known, Your best imation thereof. Exact dates shall be given in all answers except where it is explicitly ed than an approximate date may be given.
4. “Document” is intended to be as broad as it is used in Federal Rules of Civil

4. “Document” is intended to be as broad as it is used in Federal Rules of Civil Procedure (“FRCP”) 26 and 34, and includes, without limitation:

- a. the original (or an identical duplicate if the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any kind of physical media;¹
- b. any printed, typewritten, handwritten, electronic, or otherwise recorded matter of whatever character of communications, letters, correspondence, electronic mail, text messages, memoranda, notes, Post-Its, media releases or articles, photographs, tape or sound recordings, contracts, agreements, telephone records, diaries, desk calendars, appointment calendar, group scheduler calendars, statements, reports, journal, minutes, working paper, financial report, accounting report, work papers, facsimile, facsimile transmission, drafts, logs, chart, graph, index, directory, scheduling data, databases, spreadsheets, presentations, word processed documents, bulletins, design schedules, supplemental instructions, time cards, drawings, shop drawings, progress payments, progress schedules, estimates, equipment time cards, design calculations, design meeting

¹ Physical media includes, but is not limited to, paper media, photographic media (including pictures, films, slides and microfilm), phonographic media, magnetic media (including, but not limited to hard drives, floppy disks, compact disks, and magnetic tapes of any kind), computer memory, optical media, magneto-optical media, and other physical media on which notations or marking of any kind can be affixed.

1 minutes, coordination meeting minutes, and material similar to any of the
 2 foregoing, however denominated and to whomever addressed, computer
 3 directory, computer disk, computer tape, or any written, printed, typed,
 4 punched, taped, filmed, or graphic matter however produced or reproduced.
 Documents also include the file, folder tabs, and labels appended to or
 containing any documents.

5 c. For the avoidance of doubt, electronically-stored information with all
 6 metadata intact shall be produced whenever available in the format
 described below.

7 5. "Debtor" shall mean Musclepharm Corporation, and its agents, servants,
 8 employees, attorneys, representatives, predecessors, or any other person

9 6. "Entity" includes, without limiting the generality of its meaning, every
 10 corporation, partnership, association, limited liability company, joint venture and professional
 11 business entity or any iteration, subsidiary, or affiliate thereof.

12 7. "Insider" shall be ascribed the definition set forth in 11 U.S.C. § 101(31).

13 8. "Person" shall mean any natural person, trust, Entity, association of Entities and/or
 14 natural persons, and/or governmental body.

15 9. "Relate" or "relating to" means constituting, comprising, containing, setting forth,
 16 showing, disclosing, describing, explaining, summarizing, concerning, or referring to directly or
 17 indirectly.

18 10. "Relevant to" has the same meaning that it has in FRCP 26(b)(1) incorporated by
 19 Bankruptcy Rule 7026.

20 11. "You" and "Your" shall mean Ryan Drexler, and Your agents, servants, employees,
 21 attorneys, representatives, predecessors, or any other person over which You have control or have
 22 a superior right to compel to do an act or produce an item or information and specifically including,
 23 but not limited to: (i) any Entity of which You are an officer, director, manager, member,
 24 shareholder or in which You have or had any ownership or equity interest (contingent or
 25 otherwise); and (ii) any trust or similar device in which You are a settlor, trustee, co-trustee, trust
 26 protector, or beneficiary or in which You have any interest (contingent or otherwise).

27 **INSTRUCTIONS**
 28

1 1. In producing Documents and other materials, You shall furnish all Documents or
2 material in Your possession, custody, or control, regardless of whether such Documents or
3 materials are possessed by You directly or Your representatives, agents, employees, Affiliates, or
4 Insiders, or by Your attorneys or accountants or their agents, employees, representatives, or
5 investigators.

6 2. In the event that You provide only a portion of the Documents called for by any
7 particular Request, please state the reason(s) for Your inability to provide the remainder of the
8 Documents requested and the identity of the Document(s)

9 3. If any Document requested to be produced was but is no longer in Your possession
10 or control, or is no longer in existence, state whether it is (1) missing or lost, (2) destroyed, (3)
11 transferred voluntarily or involuntarily to others and if so to whom, or (4) otherwise disposed of;
12 and in each instance explain the circumstances surrounding an authorization of such disposition
13 thereof and state the approximate date thereof.

14 4. If any of the information contained in the answers to these Requests is not within
15 Your personal knowledge, please so state. The responses to the Requests should identify every
16 Person, Document, and Communication upon which You rely for the information contained in the
17 answer not based solely on Your own personal knowledge.

18 5. If You cannot answer any portion of the following Requests in full, after exercising
19 due diligence to secure the information, please so state and answer to the extent possible,
20 specifying Your inability to answer the remainder and stating whatever information or knowledge
21 You have concerning the unanswered portion.

22 6. In answering these Requests, You are requested to furnish all information available
23 at the time the responses are made, including information in the possession of Your attorneys,
24 accountants, and their agents, not merely information known to You.

25 7. You shall produce all Documents in the manner in which they are maintained in the
26 usual course of business and/or shall organize and label Documents to correspond with the
27 categories of these Requests. A Request for Documents shall be deemed to include a Request for
28

1 any and all file folders within which the document was contained, transmittal sheets, cover letters,
 2 exhibits, enclosures, or attachments to the Document in addition to the Documents itself.

3 8. Pursuant to FRCP 34(b)(1)(B), as adopted in Bankruptcy Rule 7034, any
 4 documents, electronically stored information (“ESI”) or other tangible information shall be copied
 5 and produced to the undersigned counsel by web-based email, share file, or drop box. Responsive
 6 information should be organized and labeled to correspond to the categories in the Request. ESI
 7 should be produced in native format with all metadata attached, or if any native files cannot be
 8 rendered in readable format, native format linked to a single-page tagged image file format
 9 (“TIFF”). ESI in TIFF format should be identified by an Opticon cross-reference file, and all
 10 metadata that describes the electronic files associated with ESI (e.g., “date last modified”) should
 11 be produced in text format linked to the associated files.

12 9. Whenever appropriate, the singular form of a word shall be interpreted as plural
 13 and the masculine gender shall be deemed to include feminine.

14 10. If any Document is held under claim of privilege, please identify the Document for
 15 which there is a claim of privilege by providing a full description thereof, including without
 16 limitation:

- 17 a) The date it bears;
- 18 b) The name of each Person who prepared it or who participated in any way in its
 preparation;
- 19 c) The name of each Person who signed it;
- 20 d) The name of each Person to whom it, or a copy of it was addressed;
- 21 e) The name of each Person who, at any time, was provided a copy of or otherwise
 reviewed it;
- 22 f) The name of each Person who presently has custody of it or a copy of it;
- 23 g) The subject matter and its substance; and
- 24 h) What factual basis there is for the claim of privilege.

25 11. Documents attached to each other should not be separated.

1 12. Documents not otherwise responsive to a Request shall be produced if such
2 Documents mention, discuss, refer to, or explain the Documents that are called for in the Request.

3 13. The fact that a Documents has been produced by another does not relieve You of
4 Your obligation to produce Your copy of the same Document even if the two Documents are
5 identical.

6 14. The terms "each" and "all" shall be construed as "all and each."

7 15. The connectives "and" and "or" shall be construed either disjunctively or
8 conjunctively as necessary to bring within the scope of the Request all responses that might
9 otherwise be outside of the scope.

10 16. The use of the singular form of any word includes the plural and vice versa.

11 17. The use of the feminine form of any word includes the masculine and vice versa.

12 18. You shall authenticate the business records produced.

13 19. These Requests shall be deemed continuing and as additional information
14 concerning the answers is secured, such additional information should be promptly supplemented.

DOCUMENT REQUESTS

REQUEST FOR PRODUCTION NO. 1:

17 Please produce all communications, including but not limited to emails and text-messages,
18 between You and Debtor, including its employees, counsel, and agents, since December 14, 2022.

REQUEST FOR PRODUCTION NO. 2:

20 Please produce all communications, including but not limited to emails and text-messages,
21 between You and Nicholas Rubin, since December 14, 2022.

REQUEST FOR PRODUCTION NO. 3:

23 Please produce all communications, including but not limited to emails and text-messages,
24 between You and Eric Hillman, since December 14, 2022.

REQUEST FOR PRODUCTION NO. 4:

26 Please produce all communications, including but not limited to emails and text-messages,
27 between You and Will Hovi, since December 14, 2022.

REQUEST FOR PRODUCTION NO. 5:

1 Please produce all communications, including but not limited to emails and text-messages,
2 between You and Jason Keenan, since December 14, 2022.

3 **REQUEST FOR PRODUCTION NO. 6:**

4 Please produce all communications, including but not limited to emails and text-messages,
5 between You and any of Debtor's customers since December 14, 2022.

6 **REQUEST FOR PRODUCTION NO. 7:**

7 Please produce all communications, including but not limited to e-mails and text-messages,
8 between You and any of Debtor's suppliers, since December 14, 2022.

9 **REQUEST FOR PRODUCTION NO. 8:**

10 Please produce all communications related to any investigation by the United States
11 Security Exchange Commission into You or Debtor since January 1, 2018.

12 **REQUEST FOR PRODUCTION NO. 9:**

13 Please produce all communications between You and White Winston Select Asset Funds,
14 LLC, including its agents and counsel, since April 1, 2022.

15 **REQUEST FOR PRODUCTION NO. 10:**

16 Please produce all communications between You and the Unsecured Creditor's
17 Committee, including each of its members and counsel, since January 1, 2022.

18 **REQUEST FOR PRODUCTION NO. 11:**

19 Please produce all documents and communications supporting your Motion for the
20 Appointment of a Chapter 11 Trustee.

21 **REQUEST FOR PRODUCTION NO. 12:**

22 Please produce all documents and communications between You and any third-party
23 regarding potential resolution of any claims held by You against Debtor, including but not limited
24 to causes of action and proofs of claim, since December 14, 2022.

25 **REQUEST FOR PRODUCTION NO. 13:**

26 Please produce and identify all documents and communications showing that Empery has
27 in any way acted to "depress the Debtor's value and create the environment for a low-value 363
28 sale of the Debtor's assets."

1 **REQUEST FOR PRODUCTION NO. 14:**

2 Produce all documents and communications identifying “valuable sales” that Debtor
3 missed out on, as alleged at p. 17 of ECF 447.

4 **REQUEST FOR PRODUCTION NO. 15:**

5 Produce all communications, including emails and text messages, with Brian Casutto since
6 January 1, 2018.

7 **REQUEST FOR PRODUCTION NO. 16:**

8 Produce all documents and communications in Your custody and control related to Empery
9 or its agents, including but not limited to Ryan Lane and Tim Silver.

10 **REQUEST FOR PRODUCTION NO. 17:**

11 Produce all communications, including emails and text messages, with Matthew Zucco
12 since January 1, 2018.

13 **REQUEST FOR PRODUCTION NO. 18:**

14 Produce all communications, including emails and text messages, with Kevin R. Harris
15 since January 1, 2018.

16 **REQUEST FOR PRODUCTION NO. 19:**

17 Produce all emails sent from bloomwendy452@gmail.com that refer or relate to Empery,
18 Ryan Lane, Tim Silver or otherwise.

19 **REQUEST FOR PRODUCTION NO. 20:**

20 Please produce and identify all documents and communications showing that any person
21 or party has in any way acted to “depress the Debtor’s value and create the environment for a low-
22 value 363 sale of the Debtor’s assets.”

23 **REQUEST FOR PRODUCTION NO. 21:**

24 Produce all posts or private messages from Facebook profile
25 <https://www.facebook.com/profile.php?id=100091749242631> that refer or relate to Empery, Ryan
26 Lane, Tim Silver or otherwise.

27 ///

28 ///

1 **REQUEST FOR PRODUCTION NO. 22:**

2 Produce all communications, including emails and text messages, with Rita Mikel since
3 December 14, 2022.

4 DATED this 5th day of July, 2023.

5 GARMAN TURNER GORDON LLP

6 _____
7 /s/ Dylan T. Ciciliano

8 GREGORY E. GARMAN

9 WILLIAM M. NOALL

10 TERESA M. PILATOWICZ

11 DYLAN T. CICILIANO

12 7251 Amigo Street, Suite 210

13 Las Vegas, Nevada 89119

14 *Attorneys for Empery Tax Efficient, LP as
15 Agent and Collateral Agent for certain
16 Secured Noteholders*

EXHIBIT C

EXHIBIT C

1 **STEINHILBER SWANSON LLP**

2 MICHAEL P. RICHMAN, ESQ.

3 *Admitted Pro Hac Vice*

4 122 W. Washington Ave., Suite 850

5 Madison, WI 53703

6 Telephone: (608) 630-8990

7 Facsimile: (608) 630-8991

8 mrichman@steinhilberswanson.com

9 **LAW OFFICE OF BRIAN D. SHAPIRO, LLC**

10 BRIAN D. SHAPIRO, ESQ.

11 Nevada Bar No. 5772

12 510 S. 8th Street

13 Las Vegas, NV 89101

14 Telephone: (702) 386-8600

15 Facsimile: (702) 383-0994

16 brian@brianshapirolaw.com

17 *Counsel for Ryan Drexler*

18 **UNITED STATES BANKRUPTCY COURT**
19 **DISTRICT OF NEVADA**

20 In re

21 MUSCLEPHARM CORPORATION,

22 Debtor.

23 Case No.: 22-14422-NMC
24 Chapter 11

25 **RYAN DREXLER'S OMNIBUS**
26 **INTERROGATORIES, REQUESTS FOR**
27 **PRODUCTION OF DOCUMENTS, AND**
28 **NOTICES OF DEPOSITION TO**
29 **MUSCLEPHARM, ERIC HILLMAN,**
30 **JASON KEENAN, WILL HOVI, AND**
31 **NICHOLAS RUBIN**

32 Ryan Drexler, by and through his undersigned counsel, pursuant to Rules 30, 33, and
33 34 of the Federal Rules of Civil Procedure, made applicable through Rule 7030, 7033, and
34 7034 of the Federal Rules of Bankruptcy Procedure, hereby serves on MusclePharm
35 Corporation, Eric Hillman, Jason Keenan, Will Hovi, and Nicholas Rubin the following
36 interrogatories, requests for production, and notices of deposition. The interrogatories and
37 requests for production must be responded to by 4:00 pm. (Pacific Time) on August 4, 2023,
38 or such other shorter time as agreed by the parties or otherwise ordered by the Court. All such
39 responses should also be continually updated as further information becomes available or is

1 otherwise obtained.
2

3 **DEFINITIONS**

4 These definitions shall apply to all instructions and responses to the below Interrogatories
5 and Requests for Production.

6 1. “Affiliate” shall mean any individual, general partnership, limited partnership,
7 trust, estate, corporation, limited liability company, or business trust that is owned by, directly or
8 indirectly controlled by, or acts at the direction or for the benefit of the Person or Entity named
and includes an affiliate of an affiliate.

9 2. “Communication(s)” shall mean, without limitation, any transmittal, conveyance
10 or exchange of a word, statement, fact, thing, idea, Document, instruction, information, demand,
11 question or other information by any medium, whether by written, oral or other means, including
12 but not limited to personal conversations, written correspondence, memoranda, letters, reports,
publications, electronic communications, text messaging, instant messaging, messages via social
media and electronic mail.

13 3. “Date” means the exact day, month, and year, if known, or if not known, your best
14 approximation thereof. Exact dates shall be given in all answers except where it is explicitly
indicated that an approximate date may be given.

15 4. “Debtor” shall mean MusclePharm Corporation, the debtor in the Chapter 11 case
16 of *In re MusclePharm Corporation*, Case No. 22-14422-NMC (“Bankruptcy Case”), pending in
the United States Bankruptcy Court District of Nevada (the “Bankruptcy Court”), and any Affiliate
17 or Insider thereof and its agents, servants, employees, attorneys, accountants representatives, any
18 other Person or Entity over which it has control or has a superior right to compel to do an act or
produce an item.

19 5. “Document” is intended to be as broad as it is used in FRCP 26 and 34, and includes,
20 without limitation:

21 a. the original (or an identical duplicate if the original is not available) and any
22 non-identical copies (whether non-identical because of notes made on copies or
attached comments, annotations, marks, transmission notations, or highlighting of
any kind) of writings of every kind and description that are fixed in any kind of
23 physical media

24 b. any printed, typewritten, handwritten, electronic, or otherwise recorded
matter of whatever character of communications, letters, correspondence,
25 electronic mail, text messages, instant messages, memoranda, notes, Post-Its, media
releases or articles, photographs, tape or sound recordings, contracts, agreements,
telephone records, diaries, desk calendars, appointment calendar, group scheduler
26 calendars, statements, reports, journal, minutes, working paper, financial report,
accounting report, work papers, facsimile, facsimile transmission, drafts, logs,

1 chart, graph, index, directory, scheduling data, databases, spreadsheets,
2 presentations, word processed documents, bulletins, design schedules,
3 supplemental instructions, time cards, drawings, shop drawings, progress
4 payments, progress schedules, estimates, equipment time cards, design
5 calculations, design meeting minutes, coordination meeting minutes, and material
6 similar to any of the foregoing, however denominated and to whomever addressed,
7 computer directory, computer disk, computer tape, or any written, printed, typed,
8 punched, taped, filmed, or graphic matter however produced or reproduced.
9 Documents also include the file, folder tabs, and labels appended to or containing
any documents

10 c. For the avoidance of doubt, electronically-stored information with all
11 metadata intact shall be produced whenever available in the format described
12 below.

13 6. “Empery” shall mean Empery Tax Efficient, LP, and any Affiliate or Insider thereof
14 and its agents, servants, employees, attorneys, accountants, representatives, including Ryan Lane
15 and Timothy Silver, and any other Person or Entity over which it has control or has a superior right
16 to compel to do an act or produce an item.

17 7. “Entity” includes, without limiting the generality of its meaning, every corporation,
18 partnership, association, limited liability company, joint venture and professional business entity
19 or any iteration, subsidiary, or affiliate thereof.

20 8. “Insider” shall mean (i) Your relatives; (ii) partnerships in which You are a general
21 partner; or (iii) corporations, companies or partnerships in which you are a partner, director, officer,
22 or person in control of You.

23 9. “JWN” shall mean JW Nutritional LLC, and any Affiliate or Insider thereof and its
24 agents, servants, employees, attorneys, accountants, representatives, including Jesse Windrix and
25 Peter Jungsberger, and any other Person or Entity over which it has control or has a superior right
26 to compel to do an act or produce an item.

27 10. “MHF” shall mean MHF OpcO, LLC (formerly known as Mill Haven Foods, LLC),
28 and any Affiliate or Insider thereof and its agents, servants, employees, attorneys, accountants,
representatives, including Brian Slater, and any other Person or Entity over which it has control or
has a superior right to compel to do an act or produce an item.

29 11. “Person” shall mean any natural person, trust, Entity, association of entities and/or
natural persons, and/or governmental body.

30 12. “Petition Date” means December 15, 2022.

31 13. “You” or “Your” means either MusclePharm Corporation, Eric Hillman, Jason
32 Keenan, Will Hovi, or Nicholas Rubin as directed to answer the respective interrogatories and
33 requests for production and any Affiliate or Insider thereof and Your agents, servants, employees,
34 attorneys, accountants, representatives, any other Person or Entity over which You have control or
35 have a superior right to compel to do an act or produce an item, and any Entity You were or are an

1 agent, manager, officer, or director or otherwise maintained or maintain a supervisory, advisory, or
 2 consulting role.

3 INSTRUCTIONS TO INTERROGATORIES

4 1. If you claim any form of privilege, whether based upon statute or otherwise, as a ground for not identifying requested documents, identify the Interrogatory to which the document is responsive and set forth all facts upon which such claim of privilege is based, and for each document as to which you claim any form of privilege, identify: (a) the date of the document; (b) the date upon which the document was prepared; (c) the title or caption of the document; (d) the form of the document (e.g., letter, memorandum, chart); (e) the subject matter of the document; (f) the author(s) and/or any and all other persons involved or participating in preparing or drafting the document; and (g) the recipient(s) of the document or any copy thereof, including all persons to whom the document has been provided or who have it within their possession, custody or control.

10 2. Whenever an Interrogatory requests you to "state the facts" or "describe," you should provide all information relating or referring to the subject matter of such Interrogatory, including, but not limited to, a specification of dates of all events that relate to such subject matter, the identity of all oral communications and meetings relating to the subject matter, the identity of all persons with knowledge of the facts that relate to such subject matter, and the identity of all documents that relate to, refer to, or contain information concerning the subject matter of such Interrogatory. If there are any oral or written communications concerning the subject matter of the Interrogatory, include the identity of the participants to such communications, and set forth the substance of such communications.

16 3. Whenever a date, amount or other computation or figure is requested, the exact date, amount or other computation or figure is to be given, unless it is unknown. If the exact date, amount or other computation or figure is unknown, the approximate date, amount or other computation or figure should be given (or the best estimate thereof), and the answer should state that the date, amount or other computation or figure provided is an estimate or approximation.

19 4. Where facts are set forth in the answers or portions thereof and are supplied upon information and belief, rather than your direct personal knowledge, you should so state, and specifically identify each source of such information and belief. Should you be unable to answer any Interrogatory, or any portion thereof, by either actual knowledge or upon information or belief, you should so state.

23 5. Except for reference to defined or designated terms, or unless otherwise expressly stated, each Interrogatory shall be construed independently and not by reference to any other Interrogatory herein for purposes of limitation.

25 6. Except where otherwise indicated, these Interrogatories cover the period from **December 15, 2022 through the present date**, (the "**Applicable Period**") and request the identification of all documents prepared, sent or received, in whole or in part, during such period, and of all documents, whenever prepared, which relate to any part of such period.

28 7. Whenever appropriate, the singular form of a word should be interpreted in the plural and vice versa to bring within the scope of the Interrogatory any information which

otherwise might be construed to be outside the scope. All words and phrases shall be construed as masculine, feminine or gender neutral, according to context and to bring within the scope of the Interrogatory any information which otherwise might be construed to be outside the scope.

8. These Interrogatories are continuing in nature and you are directed to seasonably supplement any prior response to the extent new or additional information subsequently becomes known to you. In such event, you are requested to include in any supplementary response the date and manner in which the new or additional information became known.

INTERROGATORIES

Interrogatory Nos. 1–3 are directed to MusclePharm Corporation, Eric Hillman, Jason Keenan, Will Hovi, and Nicholas Rubin.

INTERROGATORY NO 1. Identify each person providing information for the responses to these Interrogatories, the specific Interrogatory for which the person provided information, and the title and business address of each such person.

INTERROGATORY NO 2. Identify all persons whom You know, or have reason to believe, have knowledge of any facts relevant to the issues described in the *Motion for the Appointment of a Chapter 11 Trustee* [ECF No. 447] (“Trustee Motion”).

INTERROGATORY NO 3. State the name, occupation, address, and telephone number of each witness (fact or expert) that You expect to call or rely upon at a hearing on the Trustee Motion together with a summary of the matters to be testified about within the knowledge of each such witness.

Interrogatory Nos. 4–7 are directed to MusclePharm Corporation.

INTERROGATORY NO 4. Identify each purchase order for Debtor’s products given to the Debtor, the date so given, the products ordered therein, the prices, and the date or dates the orders were fulfilled.

INTERROGATORY NO 5. State the amount of product inventory on a product-by-product basis held by (a) the Debtor and (b) any contract manufacturer (such as JWN) on Debtor’s behalf, as of the end of each month during the Applicable Period.

INTERROGATORY NO 6. Identify each purchase order given by the Debtor to any other product or contract manufacturers who (a) expressed a willingness to manufacture MSLP products, or (b) did manufacture MSLP products. As to any manufacturers identified in (b), provide the date of orders so given, the products and services ordered therein, the prices, and the date or dates the orders were fulfilled.

INTERROGATORY NO. 7. Identify each order given by the Debtor to JWN to fulfill, the date so given, the products and services ordered therein, the prices, and the date or dates the orders were fulfilled.

Interrogatory No 8 is directed to Eric Hillman

1 **INTERROGATORY NO. 8.** Identify all of Your prior and current business relationships with
2 Peter Jungsberger, the dates such relationships began, the nature of such relationships, and any
3 contracts, agreements, or other written instruments entered into between You and Peter
Jungsberger evidencing such relationships.

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1 INSTRUCTIONS TO REQUESTS FOR PRODUCTION

2 1. You shall produce all responsive Documents and Communications in electronic
3 format to mjurkash@steinhilberswanson.com.

4 2. Except where otherwise indicated, these Requests for Production cover the period
5 from **December 15, 2022 through the present date**, (the “**Applicable Period**”) and request the
6 production of all documents and communications prepared, sent or received, in whole or in part,
during such period, and of all documents and communications, whenever prepared, which relate
to any part of such period.

7 3. You shall produce all Documents in the manner in which they are maintained in the
8 usual course of business and/or shall organize and label Documents to correspond with the
9 categories of this Request. A Request for Documents shall be deemed to include a Request for any
10 and all file folders within which the document was contained, transmittal sheets, cover letters,
exhibits, enclosures, or attachments to the Document in addition to the Document itself.

11 4. In producing Documents and other materials, You are requested to furnish all
12 Documents or things in Your possession, custody, or control, regardless of whether such
13 Documents or materials are possessed by You directly or Your directors, officers, agents,
employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by Your
attorneys or their agents, employees, representatives, or investigators.

14 5. If any of the information contained in the answers to these Requests is not within
15 Your personal knowledge, so state. The answers to the Requests should identify every Person,
16 Document, and Communication upon which You rely for the information contained in the answer
not based solely on Your own personal knowledge.

17 6. If You cannot answer any portion of the following Requests in full, after exercising
18 due diligence to secure the information, so state and answer to the extent possible, specifying Your
19 inability to answer the remainder and stating whatever information or knowledge You have
concerning the unanswered portion.

20 7. You are requested to provide all responsive Documents within Your possession,
21 custody, or control. In the event that You provide only a portion of the Documents called for by
22 any particular Request, state the reason(s) for Your inability to provide the remainder of the
Documents requested and the identity of the Document(s).

23 8. In the event the Documents called for by any particular request are no longer in
24 Your possession, custody or control, state the reason(s) why those Documents are no longer in
25 Your possession, custody, or control and the identity of the Document(s) and all Your knowledge
regarding who currently has possession, custody or control of the Document(s).

26 9. In the event that Documents called for by any particular request have been lost or
27 destroyed, please state: (i) the date on which the Document(s) were lost or destroyed; (ii) the
manner in which the Document(s) were lost or destroyed; (iii) the identity of the Document(s); (iv)
the information contained within such Document(s) and the nature of the Document(s); and (v)

1 and the identity of any person(s) who has knowledge of the contents of the Document(s) or has
2 received a copy of such Document(s).

3 10. If You withhold any Document pursuant to a claim of privilege, You shall expressly
4 make the claim of privilege and produce a privilege log in compliance with Fed. R. Civ. P. 26(b)(5),
incorporated by Fed. R. Bankr. P. 7026.

5 11. Documents attached to each other should not be separated.

6 12. Documents not otherwise responsive to this discovery request shall be produced if
7 such Documents mention, discuss, refer to, or explain the Documents that are called for in the
discovery request.

8 13. The fact that a Document has been produced by another party does not relieve You
9 of Your obligation to produce Your copy of the same Document, even if the two Documents are
10 identical.

11 14. The terms "each" and "all" shall be construed as "all and each."

12 15. The connectives "and" and "or" shall be construed either disjunctively or
13 conjunctively as necessary to bring within the scope of the discovery request all responses that
might otherwise be outside of the scope.

14 16. The use of the singular form of any word includes the plural and vice versa.

15 17. The use of the feminine form of any word includes the masculine and vice versa.

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1 **REQUESTS FOR PRODUCTION**

2 Requests for Production Nos. 1–11 are directed to MusclePharm Corporation, Eric Hillman,
3 Jason Keenan, Will Hovi, and Nicholas Rubin.

4 **REQUEST FOR PRODUCTION NO. 1.** Produce all documents and communications that You
5 relied upon to respond to the above Interrogatories.

6 **REQUEST FOR PRODUCTION NO. 2.** Produce all documents and communications that
7 refer or relate to any sale, auction, appraisal, or valuation of any of the Debtor's assets, in whole
8 or in part, either before or after the Petition Date.

9 **REQUEST FOR PRODUCTION NO. 3.** Produce all documents and communications that
10 refer or relate to the desirability of continuing the Debtor's business as a going concern.

11 **REQUEST FOR PRODUCTION NO. 4.** Produce all documents and communications that
12 refer or relate to the retention of Nicholas Rubin as the Debtor's independent director.

13 **REQUEST FOR PRODUCTION NO. 5.** Produce all documents and communications with
14 Empery regarding Ryan Drexler.

15 **REQUEST FOR PRODUCTION NO. 6.** Produce all documents and communications that
16 refer or relate to any new customers to which the Debtor has sold products since the Petition Date.

17 **REQUEST FOR PRODUCTION NO. 7.** Produce all documents and communications that
18 refer or relate to interest expressed by any customers to which the Debtor had the opportunity to
19 sell products, but did not sell products, since the Petition Date.

20 **REQUEST FOR PRODUCTION NO. 8.** Produce all documents and communications that
21 refer or relate to marketing of the Debtor's products.

22 **REQUEST FOR PRODUCTION NO. 9.** Produce all documents and communications that
23 refer or relate to any sellers to, or purchasers from, the Debtor that have ceased doing business
24 with the Debtor.

25 **REQUEST FOR PRODUCTION NO. 10.** Produce all documents and communications that
26 refer or relate to increases or decreases in product inventory held by the Debtor or by JWN on the
27 Debtor's behalf.

28 **REQUEST FOR PRODUCTION NO. 11.** Produce all documents and communications that
29 refer or relate to the Debtor's engagement or termination of product manufacturers or contract
30 manufacturers.

31 Requests for Production Nos. 12–15 are directed to MusclePharm Corporation

32 **REQUEST FOR PRODUCTION NO. 12.** Produce all variance reports submitted by the Debtor
33 since May 19 pursuant to the terms of the Final DIP Order [ECF No. 296] and final debtor-in
34 possession financing agreement between the Debtor and Empery.

1 **REQUEST FOR PRODUCTION NO. 13.** Produce all documents and communications that refer
2 or relate to the Commentary section within the Cash Flow Variance Summary in the variance
reports.

3 **REQUEST FOR PRODUCTION NO. 14.** Produce all documents and communications that refer
4 or relate to contracts or agreements between the Debtor and JWN.

5 **REQUEST FOR PRODUCTION NO. 15.** Produce all documents and communications that refer
6 or relate to sales of JWN's products or services to the Debtor.

7 **Requests for Production Nos. 16–17 are directed to Eric Hillman**

8 **REQUEST FOR PRODUCTION NO. 16.** Produce all documents and communications that refer
9 evidencing Your prior and current business relationships with Peter Jungsberger, including, but not
limited to, those documents identified in Interrogatory No. 8.

10 **REQUEST FOR PRODUCTION NO. 17.** Produce all documents and communications that refer
11 or relate to your investment in, or extension of credit to, any entity in which Peter Jungsberger is
12 an officer, director, principal shareholder, or principal creditor.

13 **Requests for Production Nos. 18–19 are directed to Nicholas Rubin**

14 **REQUEST FOR PRODUCTION NO. 18.** Produce all documents and communications that refer
15 or relate to your retention as the Debtor's independent director.

16 **REQUEST FOR PRODUCTION NO. 19.** Produce all documents and communications that refer
17 or relate to your investment in Lawclerk.Legal or any other entity in which Gregory Garman is an
officer, director or principal shareholder.

18 **Request for Production No. 20 is directed to MusclePharm Corporation, Eric Hillman, Jason
Keenan, Will Hovi, and Nicholas Rubin**

19 **REQUEST FOR PRODUCTION NO. 20.** To the extent text messages responsive to the above
20 requests directed to You were deleted from Your mobile phone and are unrecoverable from cloud-
21 based or hard drive backups, please immediately request from your service provider and produce
22 a log of such text messages containing the date, time, to, from, direction, and message type (i.e.,
23 text, picture/video, etc.) for each message. Such logs may also be available to be generated directly
by You through Your online account, without requesting them from Your provider.

**NOTICE OF DEPOSITION OF FRCP 30(B)(6) DESIGNEE OF
MUSCLEPHARM CORPORATION**

TO: MusclePharm Corporation
7380 S. Eastern Ave. #124-287
Las Vegas, Nv 89123

Samuel A. Schwartz
Schwartz Law, PLLC
601 East Bridger Avenue
Las Vegas, NV 89101

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of the designated corporate officer, director or managing agent of MusclePharm Corporation pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

NOTICE OF DEPOSITION OF ERIC HILLMAN

TO: Eric Hillman

Samuel A. Schwartz
Schwartz Law, PLLC
601 East Bridger Avenue
Las Vegas, NV 89101

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of Eric Hillman, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

NOTICE OF DEPOSITION OF JASON KEENAN

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of Jason Keenan, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

NOTICE OF DEPOSITION OF WILL HOVI

TO: Will Hovi

Samuel A. Schwartz
Schwartz Law, PLLC
601 East Bridger Avenue
Las Vegas, NV 89101

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of Will Hovi, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

NOTICE OF DEPOSITION OF NICHOLAS RUBIN

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of Nicholas Rubin, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

EXHIBIT D

EXHIBIT D

1 STEINHILBER SWANSON LLP
2 MICHAEL P. RICHMAN, ESQ.
Admitted Pro Hac Vice
3 122 W. Washington Ave., Suite 850
Madison, WI 53703
4 Telephone: (608) 630-8990
Facsimile: (608) 630-8991
mrichman@steinhilberswanson.com
5

6 **LAW OFFICE OF BRIAN D. SHAPIRO, LLC**
7 BRIAN D. SHAPIRO, ESQ.
Nevada Bar No. 5772
8 510 S. 8th Street
Las Vegas, NV 89101
9 Telephone: (702) 386-8600
Facsimile: (702) 383-0994
brian@brianshapirolaw.com
10

Counsel for Ryan Drexler
11

12 **UNITED STATES BANKRUPTCY COURT**
13 **DISTRICT OF NEVADA**

14 In re
15 MUSCLEPHARM CORPORATION,
16
17 Debtor.

Case No.: 22-14422-NMC
Chapter 11

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19
20 **RYAN DREXLER'S OMNIBUS**
21 **INTERROGATORIES, REQUESTS FOR**
22 **PRODUCTION OF DOCUMENTS, AND**
23 **NOTICES OF DEPOSITION TO EMPERY**
24 **TAX EFFICIENT, LP, RYAN LANE, AND**
25 **TIMOTHY SILVER**

26
27
28 Ryan Drexler, by and through his undersigned counsel, pursuant to Rules 30, 33, and
34 of the Federal Rules of Civil Procedure, made applicable through Rule 7030, 7033, and
7034 of the Federal Rules of Bankruptcy Procedure, hereby serves on Empery Tax Efficient,
LP, Ryan Lane, and Timothy Silver, the following interrogatories, requests for production,
and notices of deposition. The interrogatories and requests for production must be responded
to by 4:00 pm. (Pacific Time) on August 4, 2023, or such other shorter time as agreed by the
parties or otherwise ordered by the Court. All such responses should also be continually
updated as further information becomes available or is otherwise obtained.

DEFINITIONS

These definitions shall apply to all instructions and responses to the below Interrogatories and Requests for Production.

1. “Affiliate” shall mean any individual, general partnership, limited partnership, trust, estate, corporation, limited liability company, or business trust that is owned by, directly or indirectly controlled by, or acts at the direction or for the benefit of the Person or Entity named and includes an affiliate of an affiliate.

2. “Communication(s)” shall mean, without limitation, any transmittal, conveyance or exchange of a word, statement, fact, thing, idea, Document, instruction, information, demand, question or other information by any medium, whether by written, oral or other means, including but not limited to personal conversations, written correspondence, memoranda, letters, reports, publications, electronic communications, text messaging, instant messaging, messages via social media and electronic mail.

3. “Date” means the exact day, month, and year, if known, or if not known, your best approximation thereof. Exact dates shall be given in all answers except where it is explicitly indicated that an approximate date may be given.

4. “Debtor” shall mean MusclePharm Corporation, the debtor in the Chapter 11 case of *In re MusclePharm Corporation*, Case No. 22-14422-NMC (“Bankruptcy Case”), pending in the United States Bankruptcy Court District of Nevada (the “Bankruptcy Court”), and any Affiliate or Insider thereof and its agents, servants, employees, attorneys, accountants representatives, any other Person or Entity over which it has control or has a superior right to compel to do an act or produce an item.

5. “Document” is intended to be as broad as it is used in FRCP 26 and 34, and includes, without limitation:

a. the original (or an identical duplicate if the original is not available) and any non-identical copies (whether non-identical because of notes made on copies or attached comments, annotations, marks, transmission notations, or highlighting of any kind) of writings of every kind and description that are fixed in any kind of physical media

b. any printed, typewritten, handwritten, electronic, or otherwise recorded matter of whatever character of communications, letters, correspondence, electronic mail, text messages, instant messages, memoranda, notes, Post-Its, media releases or articles, photographs, tape or sound recordings, contracts, agreements, telephone records, diaries, desk calendars, appointment calendar, group scheduler calendars, statements, reports, journal, minutes, working paper, financial report, accounting report, work papers, facsimile, facsimile transmission, drafts, logs, chart, graph, index, directory, scheduling data, databases, spreadsheets, presentations, word processed documents, bulletins, design schedules, supplemental instructions, time cards, drawings, shop drawings, progress payments, progress schedules, estimates, equipment time cards, design

1 calculations, design meeting minutes, coordination meeting minutes, and material
2 similar to any of the foregoing, however denominated and to whomever addressed,
3 computer directory, computer disk, computer tape, or any written, printed, typed,
4 punched, taped, filmed, or graphic matter however produced or reproduced.
Documents also include the file, folder tabs, and labels appended to or containing
any documents

5 c. For the avoidance of doubt, electronically-stored information with all
6 metadata intact shall be produced whenever available in the format described
7 below.

8 6. "Empery" shall mean Empery Tax Efficient, LP, and any Affiliate or Insider thereof
9 and its agents, servants, employees, attorneys, accountants, representatives, including Ryan Lane
and Timothy Silver, and any other Person or Entity over which it has control or has a superior right
to compel to do an act or produce an item.

10 7. "Entity" includes, without limiting the generality of its meaning, every corporation,
11 partnership, association, limited liability company, joint venture and professional business entity
12 or any iteration, subsidiary, or affiliate thereof.

13 8. "Insider" shall mean (i) Your relatives; (ii) partnerships in which You are a general
14 partner; or (iii) corporations, companies or partnerships in which you are a partner, director, officer,
or person in control of You.

15 9. "JWN" shall mean JW Nutritional LLC, and any Affiliate or Insider thereof and its
16 agents, servants, employees, attorneys, accountants, representatives, including Jesse Windrix and
17 Peter Jungsberger, and any other Person or Entity over which it has control or has a superior right
to compel to do an act or produce an item.

18 10. "MHF" shall mean MHF Opcos, LLC (formerly known as Mill Haven Foods, LLC),
19 and any Affiliate or Insider thereof and its agents, servants, employees, attorneys, accountants,
representatives, including Brian Slater, and any other Person or Entity over which it has control or
20 has a superior right to compel to do an act or produce an item.

21 11. "Person" shall mean any natural person, trust, Entity, association of entities and/or
22 natural persons, and/or governmental body.

23 12. "Petition Date" means December 15, 2022.

24 13. "You" or "Your" means either Empery, Ryan Lane, or Timothy Silver as directed
25 to answer the respective interrogatories and requests for production and any Affiliate or Insider
26 thereof and Your agents, servants, employees, attorneys, accountants, representatives, any other
27 Person or Entity over which You have control or have a superior right to compel to do an act or
produce an item, and any Entity You were or are an agent, manager, officer, or director or otherwise
maintained or maintain a supervisory, advisory, or consulting role.

1 INSTRUCTIONS TO INTERROGATORIES

2 1. If you claim any form of privilege, whether based upon statute or otherwise, as a
3 ground for not identifying requested documents, identify the Interrogatory to which the document
4 is responsive and set forth all facts upon which such claim of privilege is based, and for each
5 document as to which you claim any form of privilege, identify: (a) the date of the document; (b)
6 the date upon which the document was prepared; (c) the title or caption of the document; (d) the
7 form of the document (e.g., letter, memorandum, chart); (e) the subject matter of the document; (f)
8 the author(s) and/or any and all other persons involved or participating in preparing or drafting the
9 document; and (g) the recipient(s) of the document or any copy thereof, including all persons to
10 whom the document has been provided or who have it within their possession, custody or control.

11 2. Whenever an Interrogatory requests you to "state the facts" or "describe," you
12 should provide all information relating or referring to the subject matter of such Interrogatory,
13 including, but not limited to, a specification of dates of all events that relate to such subject matter,
14 the identity of all oral communications and meetings relating to the subject matter, the identity of
15 all persons with knowledge of the facts that relate to such subject matter, and the identity of all
16 documents that relate to, refer to, or contain information concerning the subject matter of such
17 Interrogatory. If there are any oral or written communications concerning the subject matter of the
18 Interrogatory, include the identity of the participants to such communications, and set forth the
19 substance of such communications.

20 3. Whenever a date, amount or other computation or figure is requested, the exact
21 date, amount or other computation or figure is to be given, unless it is unknown. If the exact date,
22 amount or other computation or figure is unknown, the approximate date, amount or other
23 computation or figure should be given (or the best estimate thereof), and the answer should state
24 that the date, amount or other computation or figure provided is an estimate or approximation.

25 4. Where facts are set forth in the answers or portions thereof and are supplied upon
26 information and belief, rather than your direct personal knowledge, you should so state, and
27 specifically identify each source of such information and belief. Should you be unable to answer
28 any Interrogatory, or any portion thereof, by either actual knowledge or upon information or belief,
you should so state.

5. Except for reference to defined or designated terms, or unless otherwise expressly
stated, each Interrogatory shall be construed independently and not by reference to any other
Interrogatory herein for purposes of limitation.

6. Except where otherwise indicated, these Interrogatories cover the period from
January 1, 2022 through the present date, (the "**Applicable Period**") and request the
identification of all documents prepared, sent or received, in whole or in part, during such period,
and of all documents, whenever prepared, which relate to any part of such period.

7. Whenever appropriate, the singular form of a word should be interpreted in the
plural and vice versa to bring within the scope of the Interrogatory any information which
otherwise might be construed to be outside the scope. All words and phrases shall be construed as
masculine, feminine or gender neutral, according to context and to bring within the scope of the
Interrogatory any information which otherwise might be construed to be outside the scope.

8. These Interrogatories are continuing in nature and you are directed to seasonably supplement any prior response to the extent new or additional information subsequently becomes known to you. In such event, you are requested to include in any supplementary response the date and manner in which the new or additional information became known.

INTERROGATORIES

Interrogatory Nos. 1-5 are directed to Empery, Ryan Lane, and Timothy Silver

INTERROGATORY NO 1. Identify each person providing information for the responses to these Interrogatories, the specific Interrogatory for which the person provided information, and the title and business address of each such person.

INTERROGATORY NO 2. Identify all persons whom You know, or have reason to believe, have knowledge of any facts relevant to the issues described in the *Motion for the Appointment of a Chapter 11 Trustee* [ECF No. 447] (“Trustee Motion”).

INTERROGATORY NO 3. State the name, occupation, address, and telephone number of each witness (fact or expert) that You expect to call or rely upon at a hearing on the Trustee Motion together with a summary of the matters to be testified about within the knowledge of each such witness.

INTERROGATORY NO. 4. Provide an accounting of funds provided by the Lender (as described in the Final DIP Order) to the Debtor and all prepetition indebtedness “rolled-up” into the DIP Notes (as described in the Final DIP Order) pursuant to any debtor-in-possession financing agreements between You and the Debtor, including Exhibits A and B to the *Final Order Regarding Emergency Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 and Fed. R. Bankr. P. 4001(b) and 4001(d)*: (I) Authorizing the Debtor to Obtain Postpetition Financing, (II) Granting Senior Secured Liens and Administrative Expense Claims, (III) Determining Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief [ECF No. 296] (“Final DIP Order”).

INTERROGATORY NO. 5. Provide an accounting of all payments made to Prestige Capital Finance, LLC's Claim No. 14, including payments made to You in respect to Claim No. 14 as held by MP Collateral LLC as evidenced by the *Transfer of Claim Other than for Security* [ECF No. 360].

1 INSTRUCTIONS TO REQUESTS FOR PRODUCTION

2 1. You shall produce all responsive Documents and Communications in electronic
3 format to mjurkash@steinhilberswanson.com.

4 2. Except where otherwise indicated, these Requests for Production cover the period
5 from **January 1, 2022 through the present date**, (the “**Applicable Period**”) and request the
6 production of all documents and communications prepared, sent or received, in whole or in part,
during such period, and of all documents and communications, whenever prepared, which relate
to any part of such period.

7 3. You shall produce all Documents in the manner in which they are maintained in the
8 usual course of business and/or shall organize and label Documents to correspond with the
9 categories of this Request. A Request for Documents shall be deemed to include a Request for any
10 and all file folders within which the document was contained, transmittal sheets, cover letters,
exhibits, enclosures, or attachments to the Document in addition to the Document itself.

11 4. In producing Documents and other materials, You are requested to furnish all
12 Documents or things in Your possession, custody, or control, regardless of whether such
13 Documents or materials are possessed by You directly or Your directors, officers, agents,
employees, representatives, subsidiaries, managing agents, affiliates, investigators, or by Your
attorneys or their agents, employees, representatives, or investigators.

14 5. If any of the information contained in the answers to these Requests is not within
15 Your personal knowledge, so state. The answers to the Requests should identify every Person,
16 Document, and Communication upon which You rely for the information contained in the answer
not based solely on Your own personal knowledge.

17 6. If You cannot answer any portion of the following Requests in full, after exercising
18 due diligence to secure the information, so state and answer to the extent possible, specifying Your
19 inability to answer the remainder and stating whatever information or knowledge You have
concerning the unanswered portion.

20 7. You are requested to provide all responsive Documents within Your possession,
21 custody, or control. In the event that You provide only a portion of the Documents called for by
22 any particular Request, state the reason(s) for Your inability to provide the remainder of the
Documents requested and the identity of the Document(s).

23 8. In the event the Documents called for by any particular request are no longer in
24 Your possession, custody or control, state the reason(s) why those Documents are no longer in
25 Your possession, custody, or control and the identity of the Document(s) and all Your knowledge
regarding who currently has possession, custody or control of the Document(s).

26 9. In the event that Documents called for by any particular request have been lost or
27 destroyed, please state: (i) the date on which the Document(s) were lost or destroyed; (ii) the
manner in which the Document(s) were lost or destroyed; (iii) the identity of the Document(s); (iv)
the information contained within such Document(s) and the nature of the Document(s); and (v)

1 and the identity of any person(s) who has knowledge of the contents of the Document(s) or has
2 received a copy of such Document(s).

3 10. If You withhold any Document pursuant to a claim of privilege, You shall expressly
4 make the claim of privilege and produce a privilege log in compliance with Fed. R. Civ. P. 26(b)(5),
incorporated by Fed. R. Bankr. P. 7026.

5 11. Documents attached to each other should not be separated.

6 12. Documents not otherwise responsive to this discovery request shall be produced if
7 such Documents mention, discuss, refer to, or explain the Documents that are called for in the
discovery request.

8 13. The fact that a Document has been produced by another party does not relieve You
9 of Your obligation to produce Your copy of the same Document, even if the two Documents are
10 identical.

11 14. The terms "each" and "all" shall be construed as "all and each."

12 15. The connectives "and" and "or" shall be construed either disjunctively or
13 conjunctively as necessary to bring within the scope of the discovery request all responses that
might otherwise be outside of the scope.

14 16. The use of the singular form of any word includes the plural and vice versa.

15 17. The use of the feminine form of any word includes the masculine and vice versa.

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1 **REQUESTS FOR PRODUCTION**

2 Requests for Production Nos. 1–11 are directed to Empery, Ryan Lane, and Timothy Silver.

3 **REQUEST FOR PRODUCTION NO. 1.** Produce all documents and communications that You
4 relied upon to respond to the above Interrogatories.

5 **REQUEST FOR PRODUCTION NO. 2.** Produce all documents and communications that
6 refer or relate to any sale, auction, appraisal, or valuation of any of the Debtor's assets, in whole
7 or in part, either before or after the Petition Date.

8 **REQUEST FOR PRODUCTION NO. 3.** Produce all documents and communications that
9 refer or relate to the desirability of continuing the Debtor's business as a going concern.

10 **REQUEST FOR PRODUCTION NO. 4.** Produce all documents and communications that
11 refer or relate to the retention of Nicholas Rubin as the Debtor's independent director.

12 **REQUEST FOR PRODUCTION NO. 5.** Produce all documents and communications with
13 Empery regarding Ryan Drexler.

14 **REQUEST FOR PRODUCTION NO. 6.** Produce all documents and communications that
15 refer or relate to any new customers to which the Debtor has sold products since the Petition Date.

16 **REQUEST FOR PRODUCTION NO. 7.** Produce all documents and communications that
17 refer or relate to interest expressed by any customers to which the Debtor had the opportunity to
18 sell products, but did not sell products, since the Petition Date.

19 **REQUEST FOR PRODUCTION NO. 8.** Produce all documents and communications that
20 refer or relate to marketing of the Debtor's products.

21 **REQUEST FOR PRODUCTION NO. 9.** Produce all documents and communications that
22 refer or relate to any sellers to, or purchasers from, the Debtor that have ceased doing business
23 with the Debtor.

24 **REQUEST FOR PRODUCTION NO. 10.** Produce all documents and communications that
25 refer or relate to increases or decreases in product inventory held by the Debtor or by JWN on the
26 Debtor's behalf.

27 **REQUEST FOR PRODUCTION NO. 11.** Produce all documents and communications that
28 refer or relate to the Debtor's engagement or termination of product manufacturers or contract
29 manufacturers.

30 Requests for Production Nos. 12–16 are directed to Ryan Lane.

31 **REQUEST FOR PRODUCTION NO. 12.** Produce all documents and communications
32 supporting your sworn statement that "On February 8, 2023, I am informed and believe that an
33 unknown individual contacted the Westport Board of Education, where I reside, and asked
34 numerous school board members about my wife. This individual called the members' mobile

1 numbers from a blocked number and purported to be a New York Times Reporter. Given other
 2 events that occurred at the same time, I believe that Drexler was involved in the placing of these
 3 calls.” found at paragraph 5 of the *Declaration of Ryan Lane* [ECF No. 15-1], filed in *Drexler v.*
Silver, Case No. 23-cv-00128 (D. Nev. March 24, 2023).

4 **REQUEST FOR PRODUCTION NO. 13.** Produce all documents and communications
 5 supporting your sworn statement that “On February 17, 2023, my wife received an anonymous
 6 letter addressed to her that alleged I had been unfaithful. I believe the letter was contrived or caused
 7 to be sent by Drexler.” found at paragraph 6 of the *Declaration of Ryan Lane* [ECF No. 15-1], filed
 8 in *Drexler v. Silver*, Case No. 23-cv-00128 (D. Nev. March 24, 2023).

9 **REQUEST FOR PRODUCTION NO. 14.** Produce all documents and communications
 10 supporting your sworn statement that “On April 1, 2023, I am informed and believe that my
 11 neighbors received anonymous letters alleging that I had engaged in criminal behavior. Given the
 12 contentious nature of the various litigation with Drexler, as well as other facts, I believe that
 13 Drexler sent the letter to my neighbors.” found at paragraph 7 of the *Declaration of Ryan Lane*
 14 [ECF No. 15-1], filed in *Drexler v. Silver*, Case No. 23-cv-00128 (D. Nev. March 24, 2023).

15 **REQUEST FOR PRODUCTION NO. 15.** Produce all documents and communications
 16 supporting your sworn statement that “On April 5, 2023, a Facebook account using the name and
 17 picture of a 30-year Chicago Kirkland & Ellis LLP (“K&E”) law partner Wendy Bloom began
 18 posting about me in Westport community message boards. The fake Facebook Profile posts
 19 suggested that I was a danger to children in the community. After contacting Facebook, they
 20 confirmed that the account was created from a Northern Nevada Internet Protocol (“IP”) address,
 21 but would not provide me the exact IP address. I have since received confirmation that K&E
 22 partner Wendy Bloom did not create the Facebookeer. Wendy Bloom confirmed she still resides in
 23 the Chicago area. Likewise, I have not seen or heard of any individual named Wendy Bloom in my
 24 neighborhood, nor has anyone moved to my small neighborhood recently, as alleged in the posts.
 25 On April 14, 2023, I am informed and believed that the email address
bloomwendy452@gmail.com emailed the Westport School District school board members. The
 26 email suggests that I am violent criminal and may be a danger to children and wanted to inform
 27 the school board ‘in the event that something happens involving Mr. Lane in the future . . . in case
 28 Mr Lane acts violent or erratic in the future.’ . . . Given the timing of the allegations, as well as
 other actions and information I have seen, I believe them to have been orchestrated by Drexler. . . .”
 found at paragraphs 9 through 15 of the *Declaration of Ryan Lane* [ECF No. 15-1], filed in *Drexler*
v. Silver, Case No. 23-cv-00128 (D. Nev. March 24, 2023).

29 **REQUEST FOR PRODUCTION NO. 16.** Produce all documents and communications
 30 supporting your sworn statement that “Drexler launched a clandestine campaign to intimidate me
 31 through anonymous communications to my spouse, my children’s school board, my neighbors,
 32 and members of the town in which I reside through posts on social media groups.” found at
 33 paragraph 14 of the *Declaration of Ryan Lane in Support of Emergency Motion to Enforce*
Intercreditor and Subordination Agreement Under Section 510(a) of the Bankruptcy Code [ECF
 34 No. 508], filed in the Bankruptcy Case.

1 **Request for Production No. 17 is directed to Empery, Ryan Lane, and Timothy Silver**

2 **REQUEST FOR PRODUCTION NO. 17.** To the extent text messages responsive to the above
3 requests directed to You were deleted from Your mobile phone and are unrecoverable from cloud-
4 based or hard drive backups, please immediately request from your service provider and produce
5 a log of such text messages containing the date, time, to, from, direction, and message type (i.e.,
text, picture/video, etc.) for each message. Such logs may also be available to be generated directly
by You through Your online account, without requesting them from Your provider.

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**NOTICE OF DEPOSITION OF FRCP 30(B)(6) DESIGNEE OF
EMPERY TAX EFFICIENT, LP**

TO: Empery Tax Efficient, LP

Gregory E. Garman, Esq.

William M. Noall, Esq.
Mark M. Weisenmiller, Esq.
Garman Turner Gordon LLP
7251 Amigo Street, Suite 21
Las Vegas, Nevada 89119

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil

Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of the designated corporate officer, director or managing agent of Empery Tax Efficient, LP pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

NOTICE OF DEPOSITION OF RYAN LANE

TO: Ryan Lane
Gregory E. Garman, Esq.
William M. Noall, Esq.
Mark M. Weisenmiller, Esq.
Garman Turner Gordon LLP
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of Ryan Lane, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

NOTICE OF DEPOSITION OF TIMOTHY SILVER

TO: Timothy Silver

Gregory E. Garman, Esq.
William M. Noall, Esq.
Mark M. Weisenmiller, Esq.
Garman Turner Gordon LLP
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119

PLEASE TAKE NOTICE that pursuant to Rule 30 of the Federal Rules of Civil Procedure, made applicable by Rule 7030 of the Federal Rules of Bankruptcy Procedure, Ryan Drexler, by and through his undersigned counsel, will take the deposition upon oral examination of Timothy Silver, at the date, time, and pursuant to the means indicated below.

PLEASE TAKE FURTHER NOTICE that the deposition will be recorded by audio, audiovisual, or stenographic means before a court reporter duly authorized to administer oaths. This deposition will continue from day to day and from time to time until necessary to complete.

DATE: At a date as may be agreed to by the parties or otherwise ordered by the Court.

TIME: At a time as may be agreed to by the parties or otherwise ordered by the Court.

PLACE/MEANS: At a location as may be agreed to by the parties or otherwise ordered by the Court.

TOPICS: All matters at issue in Ryan Drexler's *Motion for the Appointment of a Chapter 11 Trustee*.

EXHIBIT E

EXHIBIT E

1 STEINHILBER SWANSON LLP

2 MICHAEL P. RICHMAN, ESQ.

3 *Admitted Pro Hac Vice*

4 122 W. Washington Ave., Suite 850

Madison, WI 53703

5 Telephone: (608) 630-8990

6 Facsimile: (608) 630-8991

7 mrichman@steinhilberswanson.com

8 **LAW OFFICE OF BRIAN D. SHAPIRO, LLC**

9 BRIAN D. SHAPIRO, ESQ.

10 Nevada Bar No. 5772

11 510 S. 8th Street

12 Las Vegas, NV 89101

13 Telephone: (702) 386-8600

14 Facsimile: (702) 383-0994

15 brian@brianshapirolaw.com

16 *Counsel for Ryan Drexler*

17 **UNITED STATES BANKRUPTCY COURT**

18 **DISTRICT OF NEVADA**

19 In re

20 MUSCLEPHARM CORPORATION,

21 Debtor.

22 Case No. BK-22-14422-NMC

23 Chapter 11

24 **RYAN DREXLER'S RESPONSES TO MUSCLEPHARM CORPORATION'S FIRST SET
OF INTERROGATORIES AND REQUESTS FOR PRODUCTION**

25 Ryan Drexler ("Drexler"), by and through his undersigned counsel, hereby responds to

26 MusclePharm Corporation's (the "Debtor") (1) First Set of Interrogatories to Ryan Drexler (the

27 "Interrogatories") and (2) First Set of Requests for Production of Documents to Ryan Drexler (the

28 "Requests for Production, and collectively with the Interrogatories, the "Discovery Requests").

29 Drexler's responses to the Discovery Requests are subject to *Ryan Drexler's Objections to*

30 *MusclePharm Corporation's First Set of Interrogatories and Requests for Production* (the

31 "Objections").

32 **Responses to Interrogatories**

33 **INTERROGATORY NO. 1:** State each factual basis for Your allegation in the Trustee Motion that
34 "at least one supplier of protein powder who is a member of the Committee has been charging the

1 Debtor above-market prices, requiring the Debtor to raise prices to its customers in a manner that
2 renders the Debtor's products uncompetitive with similar products." See Trustee Motion, pg. 4 of 34.

3 **Response:** Subject to the Objections, and to the production of documents and information, and
4 other evidence to be presented at the evidentiary hearing of the Trustee Motion, Drexler
5 believes that JW Nutritional, LLC ("JWN") has been charging the Debtor above-market prices.
6 Drexler's allegations are based upon his review of prices being charged in the market by
7 Muscle & Strength, one of the Debtor's customers. Drexler also reviewed the Debtor's
8 monthly operating reports, which demonstrated that the Debtor was only earning
9 approximately 30% gross margin on its products, when Drexler believes the Debtor should
10 have been earning at least 40% gross margin. Drexler prepared a cost model to make this
11 determination. Drexler further observed that the Debtor had increased prices of its products for
12 sale, which made them more expensive than competitor prices for similar products. Drexler has
13 requested documents from the Debtor and JWN to obtain more specific information relating to
14 JWN's pricing to the Debtor, and the impact of that pricing on the Debtor's resulting sales.

15 **INTERROGATORY NO. 2:** State each factual basis for Your allegation in the Trustee Motion that
16 "this kind of price gouging from a member of the Committee is an effort to recoup pre-petition claims
and losses by charging higher post-petition prices [and] has Empery's support and encouragement . . .
." See Trustee Motion, pg. 5 of 34.

17 Subject to the Objections, and to the production of documents and information, and other
18 evidence to be presented at the evidentiary hearing of the Trustee Motion, JWN filed a proof of
19 claim in the amount of \$842,799.19 based on various unpaid invoices between JWN and the
20 Debtor. As discussed above, Drexler believes that JWN is purchasing protein powder at the
21 same cost at which the Debtor could buy it directly, and then marking it up as part of the price
22 it charges the Debtor for manufacturing the Debtor's products. In contrast, prior to the
23 bankruptcy, JWN passed on to the Debtor the costs of protein without marking it up. In effect,
24 this means that the Debtor is making post-petition payments to a "middleman" unsecured
25 creditor that are completely unnecessary, and would not likely be tolerated by the Debtor in a
26 non-bankruptcy environment. The argument that this conduct constitutes price-gouging and is
27 in substance a recouping by JWN of its unpaid prepetition unsecured claim is legal argument,
28

1 based on evidence and inferences, which will necessarily follow complete production of
2 documents and information, and a trial on the Trustee Motion.

3 **INTERROGATORY NO. 3:** State each factual basis for Your allegation in the Trustee Motion that
4 “the Debtor has lost profitable accounts” See Trustee Motion, pg. 17 of 34.

5 **Response:** Subject to the Objections, and to the production of documents and information, and
6 other evidence to be presented at the evidentiary hearing of the Trustee Motion, Drexler
7 contends that Avador Business Group, CA – Eat Routes, Inc., Comercializadora, DNA Sports
8 Nutrition, MDM Global, iHerb, Muscle Foods, and Shri Balaji Overseas have stopped
9 purchasing the Debtor’s products. Drexler obtained this information from Jason Keenan or Will
10 Hovi.

11 **INTERROGATORY NO. 4:** State each factual basis for Your allegation in the Trustee Motion that
12 “the Debtor is missing out on valuable sales” See Trustee Motion, pg. 17 of 34.

13 **Response:** Subject to the Objections, and to the production of documents and information, and
14 other evidence to be presented at the evidentiary hearing of the Trustee Motion, Drexler has
15 alleged that the Debtor is “missing out on valuable sales” because, among other reasons
16 (believed to include pricing), several companies have ceased to do business with it, and
17 continuing customers are doing less business with it. Drexler respectfully refers the Debtor to
18 his response to Interrogatory No. 3. In addition, based upon Instagram messages sent by Eric
19 Hillman, Drexler believes that the Debtor is deliberately not pursuing sales or marketing
20 opportunities.

21 **INTERROGATORY NO. 5:** State each factual basis for Your allegation in the Trustee Motion that
22 protein component market prices are “plummeting,” including the date on which You have assessed
23 protein component market prices and the sources on which you relied. See Trustee Motion, pg. 17 of
24 34.

25 **Response:** Subject to the Objections, and to the production of documents and information, and
26 other evidence to be presented at the evidentiary hearing of the Trustee Motion, Drexler
27 monitors protein prices from time-to-time in order to gauge and assess developments in the
28 market. To do this, Drexler relies upon, among other things, public information on the internet.
Drexler also relied upon the Debtor’s budgets and other financial information supplied to the

1 Court. Based on that information, Drexler understands that in early 2023 protein prices
2 dropped to approximately \$1.80 per pound, which represented a greater than 50% decline in
3 price over the previous six months. Drexler has also had conversations with Jason Keenan and
4 Will Hovi during which they reported that JWN was purchasing protein powder at the same
5 cost at which the Debtor could buy it directly, and then marking it up as part of the price it
6 charges the Debtor for manufacturing the Debtor's products. In contrast, prior to the
7 bankruptcy, JWN passed on to the Debtor the costs of protein without marking it up. This
8 likely forced the Debtor to raise its prices with consequent negative impacts to sales.

9 **INTERROGATORY NO. 6:** State each factual basis for Your allegation in the Trustee Motion that
10 “[f]unds that were to be used to build inventory appear to have been diverted to professional fees[,]”
11 including the identity of the intended recipient of the funds, the amount of the funds You contend were
diverted, and the date of the alleged diversion. *See* Trustee Motion, pg. 17 of 34.

12 **Response:** Subject to the Objections, this interrogatory calls for legal argument, which will
13 necessarily follow complete production of documents and information, and a trial on the
14 Trustee Motion. However, the factual basis includes that on March 8, 2023, the Court entered
15 its final order approving post-petition financing, which included an annual budget that delayed
16 inventory build until July 2023. On March 27, 2023, the Debtor filed a final budget which
17 similarly did not reflect any inventory build through June 11, 2023. The Debtor's monthly
18 operating reports also do not report any expenses incurred for inventory build. Indeed, the
19 Debtor's May operating report indicates only \$95,302 in inventory, which was unchanged from
the previous two months. Finally, the Debtor's monthly operating reports appear to show DIP
20 loan advances of approximately \$2.5 million, and the Court has approved professional fee
21 applications that total to \$1.45 million (and Drexler believes that the professionals have been
22 paid substantially more through the monthly fee application process). In the circumstances
23 there does not appear to be any material amount of DIP financing that has been used by the
24 Debtor for its business operations, contrary to the representations made by the Debtor and other
25 parties in seeking Court approval for such financing.

1 **INTERROGATORY NO. 7:** State each factual basis for Your allegation in the Trustee Motion that
 2 “Debtor has misled the Court and parties by failing to purchase materials or otherwise expand the
 3 business, and appear not to have spent any money building their inventory since the case began.” *See*
 4 Trustee Motion, pg. 18 of 34.

5 **Response:** Subject to the Objections, and to the production of documents and information, and
 6 other evidence to be presented at the evidentiary hearing of the Trustee Motion, the final order
 7 approving post-petition financing authorized a \$1 million inventory acquisition line of credit “to
 8 fund Debtor’s acquisition of inventory in accordance with the Budget on an as needed basis.”
 9 But the Debtor’s budget and monthly operating reports suggest that the Debtor has not acquired
 10 any inventory so that it can expand its business and fulfill purchase orders.

11 **INTERROGATORY NO. 8:** State each factual basis for Your allegation in the Trustee Motion that
 12 there are “alternative sources of cheaper protein . . . ,” including the name of each alternative source.
 13 *See* Trustee Motion, pg. 17 of 34.

14 **Response:** Subject to the Objections, and to the production of documents and information, and
 15 other evidence to be presented at the evidentiary hearing of the Trustee Motion, Drexler
 16 monitors protein prices from time-to-time in order to gauge and assess the market. He believes
 17 that BESTWHEY, LLC, Bulk Buy USA, Bongards, Osage, JLS/Marquez, and Atlantic Grain &
 18 Trade are examples of alternative sources of cheaper protein.

19 **INTERROGATORY NO. 9:** Identify the discovery obtained through Rule 2004 examinations sought
 20 by White Winston, Empery, and You that “has already started expensive litigation among the parties
 21 and will soon raise further disputes with the Debtor over the claims and causes of action to which,
 22 respectively, the Debtor should object or otherwise prosecute” as alleged in Your Trustee Motion. *See*
 23 Trustee Motion, pg. 16-17 of 34.

24 **Response:** On February 17, 2023, Empery sought and obtained an order authorizing a Rule
 25 2004 examination of Drexler and White Winston Select Asset Funds, LLC. On February 17,
 26 2023, White Winston Select Asset Funds, LLC sought and obtained an order authorizing a Rule
 27 2004 examination of Empery. On March 29, 2023, while that discovery was pending, White
 28 Winston Select Asset Funds, LLC commenced an adversary proceeding against Empery and
 29 other affiliated noteholders. In addition, in part while that discovery was pending, Empery and
 30 White Winston Select Asset Funds, LLC engaged in various litigation and contested matters
 31 regarding the Debtor’s post-petition financing. All those matters were pending and ongoing at

1 the time the Trustee Motion was filed. In addition, since the Trustee Motion was filed, Empery
2 filed its Emergency Motion to Enforce the Intercreditor and Subordination Agreement and filed
3 an adversary proceeding against Drexler.

4 **INTERROGATORY NO. 10:** Describe the processes, controls, and procedures, including internal
5 control over financial reporting and disclosure controls and procedures, that the Debtor had in place
6 from the first quarter of 2021 through the Petition Date to provide investors with assurance that the
Debtor's accounting and public reports were accurate.

7 **Response:** As set forth in the Objections, Drexler objects to the entirety of this interrogatory
8 and will not respond.

9 **INTERROGATORY NO. 11:** Identify the "information received from other sources" that You refer
10 to in Your *Objection to Emergency Motion to Enforce Intercreditor and Subordination Agreement*
Under Section 510(a) of the Bankruptcy Code [ECF No. 506], including the name of the source and
11 the nature and form of the information.

12 **Response:** Subject to the Objections, the "other sources" were telephone conversations with
13 Will Hovi and Jason Keenan.

14 **INTERROGATORY NO. 12:** Describe the information that You allege indicates that a regular
15 course of communications between and among Empery, JW Nutritional LLC, the Debtor's chief
executive officer, and the Debtor's Independent Director will show a deliberate restraint of sales of
16 Debtor's products in order to artificially depress the value of the Debtor's business and reduce the
proceeds that might be received in an auction sale, as alleged in Your *Objection to Emergency Motion*
to Enforce Intercreditor and Subordination Agreement Under Section 510(a) of the Bankruptcy Code
[ECF No. 506].

18 **Response:** Subject to the Objections, and to the production of documents and information, and
19 other evidence to be presented at the evidentiary hearing of the Trustee Motion, Drexler
20 respectfully refers the Debtor to his response to Interrogatory No. 11.

21 **INTERROGATORY NO. 13:** Describe the factual circumstance Concerning the turnover of
22 principal accounting officers of MusclePharm in the third quarter of 2017.

23 **Response:** As set forth in the Objections, Drexler objects to the entirety of this interrogatory
24 and will not respond.

25 **INTERROGATORY NO. 14:** Describe MusclePharm's process for recognizing revenue on
26 inventory which has been temporarily stored off-site in trailers rather than being shipped to
MusclePharm's customers prior to year-end.

1 **Response:** As set forth in the Objections, Drexler objects to the entirety of this interrogatory
2 and will not respond.

3 **INTERROGATORY NO. 15:** State each factual basis for the statement in MusclePharm's Form 10-
4 Q filed on May 16, 2022, that:

5 The Company has deficiencies in the design and operation of its internal controls in the
6 financial processes related to the accounting for cash, accounts receivable, accounts
7 payable, inventory, accrued liabilities, income taxes, debt, equity, revenue, costs of sales,
8 stock-based compensation, and expenses classification. In addition, the Company has
9 insufficient controls over the financial close and reporting process, including account
10 reconciliations and preparation and review of financial statements and related disclosures.

11 **Response:** As set forth in the Objections, Drexler objects to the entirety of this interrogatory
12 and will not respond.

13 **INTERROGATORY NO. 16:** Identify each person or entity You believe has discoverable
14 information Concerning Your allegations in the Trustee Motion.

15 **Response:** Subject to the Objections, the following individuals have discoverable information
16 concerning the allegations in the Trustee Motion: Ryan Drexler, Nicholas Rubin, Will Hovi,
17 Eric Hillman, Jason Keenan, Brian Slater, Jesse Windrix, Peter Jungsberger, Ryan Lane,
18 Timothy Silver, Andreas Padvaiskas, JWN, Empery, SK Nutrition, and the Debtor. Because
19 discovery is ongoing, Drexler specifically reserves his right to supplement this interrogatory.

20 Responses to Requests for Production

21 **REQUEST NO. 1:** Produce all Documents and Communications Concerning Your allegation in the
22 Trustee Motion that "at least one supplier of protein powder who is a member of the Committee has
23 been charging the Debtor above-market prices, requiring the Debtor to raise prices to its customers in a
24 manner that renders the Debtor's products uncompetitive with similar products." See Trustee Motion,
25 pg. 4 of 34.

26 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
27 possession, custody, or control.

28 **REQUEST NO. 2:** Produce all Documents and Communications Concerning Your allegation in the
29 Trustee Motion that "at least one member of the Committee [is complicit] in Empery's objectives, and
30 . . . the member is serving those objectives by charging the Debtor above-market prices for its protein
31 inputs . . ." See Trustee Motion, pg. 16 of 34.

1 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
2 possession, custody, or control.

3 **REQUEST NO. 3:** Produce all Documents and Communications Concerning Your allegation in the
4 Trustee Motion that the “Debtor’s management has been allowing at least one Committee member to
overcharge the Debtor for the component protein it needs to manufacture and sell its products”
5 *See Trustee Motion, pg. 17 of 34*

6 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
7 possession, custody, or control.

8 **REQUEST NO. 4:** Produce all Documents and Communications Concerning Your allegation in the
9 Trustee Motion that “the Debtor has allowed at least one Committee member, along with Empery, to
depress the Debtor’s value and create the environment for a low-value 363 sale of the Debtor’s assets.”
10 *See Trustee Motion, pg. 17 of 34.*

11 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
12 possession, custody, or control.

13 **REQUEST NO. 5:** Produce all Documents and Communications Concerning Your allegation in the
14 Trustee Motion that “this kind of price gouging from a member of the Committee is an effort to recoup
prepetition claims and losses by charging higher post-petition prices [and] has Empery’s support and
encouragement” *See Trustee Motion, pg. 5 of 34.*

16 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
17 possession, custody, or control.

18 **REQUEST NO. 6:** Produce all Documents and Communications Concerning Your allegation that
“the Debtor has lost profitable accounts” *See Trustee Motion, pg. 17 of 34.*

19 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
20 possession, custody, or control.

21 **REQUEST NO. 7:** Produce all Documents and Communications Concerning Your allegation that
“the Debtor is missing out on valuable sales” *See Trustee Motion, pg. 17 of 34.*

23 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
24 possession, custody, or control.

26 **REQUEST NO. 8:** Produce all Documents and Communications Concerning Your allegation in the
Trustee Motion that protein component market prices are “plummeting,” including the sources on
which you relied for protein component market prices. *See Trustee Motion, pg. 17 of 34.*

1 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
2 possession, custody, or control.

3 **REQUEST NO. 9:** Produce all Documents and Communications Concerning Your allegation in the
4 Trustee Motion that the Debtor has not taken advantage of “alternative sources of cheaper protein to
5 support more profitable sales” including Documents and Communications reflecting the identity of the
6 supplier, pricing, and terms of sale for each alleged alternative source. *See* Trustee Motion, pg. 17
of 34.

7 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
8 possession, custody, or control.

9 **REQUEST NO. 10:** Produce all Documents and Communications Concerning Your allegation in the
10 Trustee Motion that “[f]unds that were to be used to build inventory appear to have been diverted to
professional fees.” *See* Trustee Motion, pg. 17 of 34.

11 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
12 possession, custody, or control other than documents that have been filed with the Court.

13 **REQUEST NO. 11:** Produce all Documents and Communications Concerning Your allegation in the
14 Trustee Motion that “Debtor has misled the Court and parties by failing to purchase materials or
otherwise expand the business, and appear not to have spent any money building their inventory since
the case began.” *See* Trustee Motion, pg. 18 of 34.

16 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
17 possession, custody, or control other than documents that have been filed with the Court.

18 **REQUEST NO. 12:** Produce the discovery obtained through Rule 2004 examinations sought by
19 White Winston, Empery, and You that “has already started expensive litigation among the parties and
will soon raise further disputes with the Debtor over the claims and causes of action to which,
respectively, the Debtor should object or otherwise prosecute” as alleged in Your Trustee Motion. *See*
20 Trustee Motion, pg. 16-17 of 34.

21 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
22 possession, custody, or control other than documents that have been filed with the Court.

23 **REQUEST NO. 13:** Produce all Communications from January 1, 2023 to the present between You
24 or any person acting on Your behalf and Will Hovi.

25 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
26 possession, custody, or control.

1 **REQUEST NO. 14:** Produce all Communications from January 1, 2023 to the present between You
2 or any person acting on Your behalf and Jason Keenan.

3 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
4 possession, custody, or control.

5 **REQUEST NO. 15:** Produce all Communications from January 1, 2023 to the present between You
6 or any person acting on Your behalf and Eric Hillman.

7 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
8 possession, custody, or control.

9 **REQUEST NO. 16:** Produce all Communications from January 1, 2023 to the present between You
10 or any person acting on Your behalf and any officer, director, or employee of the Debtor that has not
11 been produced in response to a preceding Request.

12 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
13 possession, custody, or control.

14 **REQUEST NO. 17:** Produce all Communications from January 1, 2023 to the present between You
15 or any person acting on Your behalf and JW Nutritional LLC or any owner, member, principal,
16 officer, director, representative, or employee thereof, including Jesse Windrix and Peter Jungsberger.

17 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
18 possession, custody, or control.

19 **REQUEST NO. 18:** Produce all Communications from January 1, 2023 to the present between You
20 or any person acting on Your behalf and MHF OpcO, LLC or any owner, member, principal, officer,
21 director, representative, or employee thereof, including Brian Slater.

22 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
23 possession, custody, or control.

24 **REQUEST NO. 19:** Produce all Communications from January 1, 2023 to the present between You
25 or any person acting on Your behalf and Empery or any owner, member, principal, officer, director,
26 representative, or employee thereof, including Tim Silver and Ryan Lane.

27 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
28 possession, custody, or control.

29 **REQUEST NO. 20:** Produce all Communications from January 1, 2023 and the present between You
30 or any person acting on Your behalf and any vendor or supplier to the Debtor or any owner, member,
31 principal, officer, director, representative, or employee thereof.

1 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
2 possession, custody, or control.

3 **REQUEST NO. 21:** Produce all Communications from January 1, 2023 and the present between You
4 or any person acting on Your behalf and any competitor of the Debtor or any owner, member,
5 principal, officer, director, representative, or employee thereof.

6 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
7 possession, custody, or control.

8 **REQUEST NO. 22:** Produce all Documents and Communications sent by, or received from, the
9 “other sources” You refer to in Your *Objection to Emergency Motion to Enforce Intercreditor and
Subordination Agreement Under Section 510(a) of the Bankruptcy Code* [ECF No. 506].

10 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
11 possession, custody, or control.

12 **REQUEST NO. 23:** Produce all Documents and Communications between and among Empery, JW
13 Nutritional LLC, the Debtor’s chief executive officer, and the Debtor’s Independent Director that “will
14 show a deliberate restraint of sales of Debtor’s products in order to artificially depress the value of the
15 Debtor’s business and reduce the proceeds that might be received in an auction sale,” as alleged in
16 Your *Objection to Emergency Motion to Enforce Intercreditor and Subordination Agreement Under
Section 510(a) of the Bankruptcy Code* [ECF No. 506].

17 **Response:** Subject to the Objections, Drexler will produce any responsive documents in his
18 possession, custody, or control.

19 **REQUEST NO. 24:** Produce all Documents and Communications which contain, describe, or discuss
20 any part of the processes, controls, and procedures, including internal control over financial reporting
and disclosure controls and procedures, that the Debtor had in place from the first quarter of 2021
through the Petition Date to provide investors with assurance that the Debtor’s accounting and public
reports were accurate.

21 **Response:** As set forth in the Objections, Drexler objects to the entirety of this request for
22 production and will not respond.

23 **REQUEST NO. 25:** Produce all Documents and Communications Concerning the design of,
24 implementation of, or compliance with the processes, controls, and procedures referenced in the
preceding Request.

25 **Response:** As set forth in the Objections, Drexler objects to the entirety of this request for
26 production and will not respond.

REQUEST NO. 26: Produce all Documents and Communications discussed or relied upon in connection with the following statement in MusclePharm's Form 10-Q filed on May 16, 2022:

The Company has deficiencies in the design and operation of its internal controls in the financial processes related to the accounting for cash, accounts receivable, accounts payable, inventory, accrued liabilities, income taxes, debt, equity, revenue, costs of sales, stock-based compensation, and expenses classification. In addition, the Company has insufficient controls over the financial close and reporting process, including account reconciliations and preparation and review of financial statements and related disclosures.

Response: As set forth in the Objections, Drexler objects to the entirety of this request for production and will not respond.

REQUEST NO. 27: Produce all Documents and Communications Concerning the turnover of principal accounting officers of MusclePharm in the third quarter of 2017 and MusclePharm's disclosure thereof.

Response: As set forth in the Objections, Drexler objects to the entirety of this request for production and will not respond.

REQUEST NO. 28: Produce all Documents and Communications Concerning MusclePharm's process for recognizing revenue on inventory which has been temporarily stored off-site in trailers rather than being shipped to MusclePharm's customers prior to year-end.

Response: As set forth in the Objections, Drexler objects to the entirety of this request for production and will not respond.

REQUEST NO. 29: Produce all Documents and Communications You may use to support Your allegations in the Trustee Motion.

Response: Subject to and without waiving the General Objections, Drexler anticipates responding to this request for production, except for documents and communications received from other parties in discovery on the Trustee Motion.

[signature page follows]

1 Dated: July 19, 2023.

2 /s/ Ryan Drexler

3 Ryan Drexler

4 As to objections:

5 **STEINHILBER SWANSON LLP**

6 /s/ Michael P. Richman, Esq.

7 MICHAEL P. RICHMAN

8 *Admitted Pro Hac Vice*

9 122 W. Washington Ave., Suite 850

10 Madison, WI 53703

11 Telephone: (608) 630-8990

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14 *Counsel for Ryan Drexler*

EXHIBIT F

EXHIBIT F

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Counsel for Ryan Drexler

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

MUSCLEPHARM CORPORATION,
Debtor.

Case No. BK-22-14422-NMC

**RYAN DREXLER'S SUPPLEMENTAL RESPONSE TO MUSCLEPHARM
CORPORATION'S INTERROGATORY NO. 11**

Ryan Drexler (“Drexler”), by and through his undersigned counsel, hereby submits this supplemental response to MusclePharm Corporation’s (the “Debtor”) Interrogatory No. 11, set forth in the Debtor’s First Set of Interrogatories to Ryan Drexler. Drexler’s supplemental response to this interrogatory is subject to *Ryan Drexler’s Objections to MusclePharm Corporation’s First Set of Interrogatories and Requests for Production* (the “Objections”).

[next page]

1 **INTERROGATORY NO. 11:** Identify the “information received from other sources” that You refer
2 to in Your *Objection to Emergency Motion to Enforce Intercreditor and Subordination Agreement*
3 *Under Section 510(a) of the Bankruptcy Code* [ECF No. 506], including the name of the source and
4 the nature and form of the information.

5 **Response:** Subject to the Objections, the “other sources” referenced in Drexler’s *Objection to*
6 *Emergency Motion to Enforce Intercreditor and Subordination Agreement Under Section*
7 *510(a) of the Bankruptcy Code* were Jason Keenan and Will Hovi. To the best of his
8 recollection, between January 2023 to April 2023, Drexler had approximately six or seven
9 telephone conversations with each of Mr. Keenan and Mr. Hovi. Drexler remembers from his
10 conversations that Mr. Keenan stated that the Debtor was paying one all-inclusive unit price for
11 product; that JW Nutritional (“JWN”) was not delivering product on time; that Mr. Keenan
12 could not determine the Debtor’s gross margin, but he believed that the Debtor’s pricing was
13 high on the websites on which the Debtor sold its products; and that Ryan Lane had regular
14 communications with Eric Hillman. Drexler remembers from his conversations with Mr. Hovi
15 that JWN was not delivering product on time. Drexler further remembers that either Mr.
16 Keenan or Mr. Hovi suggested that Mr. Hilman was too focused on creatine, 200-pound
17 protein, and shaker cups than he was in ensuring that the Debtor’s products were delivered on
18 time to its accounts and that the Debtor’s gross margin was sufficient to support the Debtor’s
19 operations. Based on this information, together with other public sources of information
20 described in Drexler’s responses to the Debtor’s other interrogatories, Drexler determined that
21 the Debtor was being charged above-market prices for protein.

22 [signature page follows]

1 Dated: July 24, 2023.

2 /s/ Ryan Drexler

3 Ryan Drexler

4 As to objections:

5 **STEINHILBER SWANSON LLP**

6 /s/ Michael P. Richman, Esq.

7 MICHAEL P. RICHMAN

8 *Admitted Pro Hac Vice*

9 122 W. Washington Ave., Suite 850

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13 mrichman@steinhilberswanson.com

14 *Counsel for Ryan Drexler*

EXHIBIT G

EXHIBIT G

From: Samuel A. Schwartz <saschwartz@nvfirm.com>
Sent: Monday, July 24, 2023 2:36 PM
To: Michael Richman <mrichman@Steinhilberswanson.com>
Cc: Olivier H. Reiher <oreiher@staffordlaw.com>; Shara Larson <shara@ghandilaw.com>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went (jgwent@hollandhart.com) <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>
Subject: Re: [EXTERNAL] RE: Meet and Confer Communication

You did interpret it correctly - trying to create a bit of time for us to prep here.

Samuel A. Schwartz, Esq.
Schwartz Law, PLLC
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On Jul 24, 2023, at 12:33 PM, Michael Richman <mrichman@steinhilberswanson.com> wrote:

Not sure yet. Sam just wrote to request a 9:30 central (7:30 pacific) start time for Slater on Thursday. Shara, can we start Windrix later on Thursday to avoid a potential conflict, or move it to Friday (morning or afternoon)? (Sam, if I did not interpret your email correctly please let me know).

From: Olivier H. Reiher <oreiher@staffordlaw.com>

Sent: Monday, July 24, 2023 2:21 PM

To: Michael Richman <mrichman@Steinhilberswanson.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>

Cc: Shara Larson <shara@ghandilaw.com>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went <jgwent@hollandhart.com> <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>; Olivier H. Reiher <oreiher@staffordlaw.com>

Subject: RE: [EXTERNAL] RE: Meet and Confer Communication

Michael,

That would be acceptable to us, assuming that you would have enough time for your deposition of Mr. Slater prior to your 1 pm deposition of JW.

Olivier

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From: Michael Richman <mrichman@Steinhilberswanson.com>

Sent: Monday, July 24, 2023 2:19 PM

To: Samuel A. Schwartz <saschwartz@nvfirm.com>; Olivier H. Reiher <oreiher@staffordlaw.com>

Cc: Shara Larson <shara@ghandilaw.com>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went <jgwent@hollandhart.com> <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>

Subject: [External] - RE: [EXTERNAL] RE: Meet and Confer Communication

I think these proposals re Windrix/Slater were actually meant to be central time. Is that a problem? Incidentally, Teresa and I have a call with counsel to Meta on Thursday at 9 a.m. pacific time, which may last a half hour or so. We'll have to work around that.

From: Samuel A. Schwartz <saschwartz@nvfirm.com>

Sent: Monday, July 24, 2023 2:15 PM

To: Olivier H. Reiher <oreiher@staffordlaw.com>

Cc: Michael Richman <mrichman@Steinhilberswanson.com>; Shara Larson <shara@ghandilaw.com>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went <jgwent@hollandhart.com> <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>

Subject: Re: [EXTERNAL] RE: Meet and Confer Communication

All times are pacific, correct?

Samuel A. Schwartz, Esq.

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Las Vegas, Nevada 89101

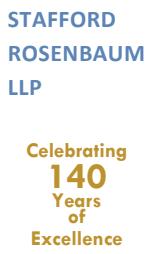
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On Jul 24, 2023, at 11:48 AM, Olivier H. Reiher <oreiher@staffordlaw.com> wrote:

Michael,

Brian Slater would be available Thursday morning. Would 9 am work for you?

Olivier



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From: Michael Richman <mrichman@Steinhilberswanson.com>

Sent: Monday, July 24, 2023 11:33 AM

To: Olivier H. Reiher <oreiher@staffordlaw.com>; Shara Larson <shara@ghandilaw.com>; Teresa

Pilatowicz <tpilatowicz@gtg.legal>

Cc: William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@briansapirolaw.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went <jgwent@hollandhart.com> <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>

Subject: [External] - RE: [EXTERNAL] RE: Meet and Confer Communication

Olivier: As it stands right now, Jungsberger appears to have defaulted in his subpoena compliance, and so his deposition will necessarily be delayed until the Court decides the motion to compel we will bring. So assuming others are agreeable, I think it would make sense to have Windrix and Slater on Thursday and/or Friday this week. If you and counsel for JWN are able to check and provide witness availability on those days (via Zoom), it should be easy to schedule them. Michael

Michael P. Richman

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<image001.jpg>

From: Olivier H. Reiher <oreiher@staffordlaw.com>

Sent: Monday, July 24, 2023 11:03 AM

To: Michael Richman <mrichman@Steinhilberswanson.com>; Shara Larson <shara@ghandilaw.com>;

Teresa Pilatowicz <tpilatowicz@gtg.legal>

Cc: William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@briansapirolaw.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went <jgwent@hollandhart.com> <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>; Olivier H. Reiher <oreiher@staffordlaw.com>

Subject: RE: [EXTERNAL] RE: Meet and Confer Communication

Michael,

That would work for us as well, although we would prefer to get an idea of when you would want to take Mr. Slater's deposition. If we will have our meet and confer tomorrow, we would request that Mr.

Slater's deposition not be taken until later in the week. If that is acceptable to you, then we can hold our meet and confer as Ms. Larson suggested.

Olivier

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From: Michael Richman <mrichman@Steinhilberswanson.com>

Sent: Monday, July 24, 2023 10:56 AM

To: Shara Larson <shara@ghandilaw.com>; Teresa Pilatowicz <tpilatowicz@gtg.legal>

Cc: Olivier H. Reiher <oreiher@staffordlaw.com>; William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went <jgwent@hollandhart.com> <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>

Subject: [External] - RE: [EXTERNAL] RE: Meet and Confer Communication

That's a good idea, and acceptable to us.

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<image001.jpg>

From: Shara Larson <shara@ghandilaw.com>

Sent: Monday, July 24, 2023 10:53 AM

To: Teresa Pilatowicz <tpilatowicz@gtg.legal>

Cc: Olivier H. Reiher <oreiher@staffordlaw.com>; Michael Richman <mrichman@Steinhilberswanson.com>; William Noall <wnoall@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm

<GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@gtg.legal>; Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapiro.com>; Laura Schnetzer <lks@ghandilaw.com>; Joseph Went <jgwent@hollandhart.com> <jgwent@hollandhart.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>; Chris A. Barrow <ChrisBarrow@barrowgrimm.com>

Subject: Re: [EXTERNAL] RE: Meet and Confer Communication

All:

JWN has tentatively already scheduled a meet and confer with Mr. Richman on Tuesday at 2:00 p.m. CT/ 12:00 p.m. PT. It seems that the discovery issues with Mill Haven (Slater) and JWN, as non-parties, will be more limited. As such, if Olivier is available on Tuesday at 2:00 p.m. CT/ 12:00 p.m. PT, I would suggest that Mr. Richman have a call with the non-parties' counsel at that time. A separate call can be made between the parties to the contested matter (Debtors, Empery, etc.). This will minimize fees incurred by JWN and Mill Haven in listening into the more substantial discovery disputes that exist between the parties.

Olivier and Michael, please advise if this is agreeable to you.

Thank you,
Shara

On Mon, Jul 24, 2023, 1:57 AM Teresa Pilatowicz <tpilatowicz@gtg.legal> wrote:

Does 11 am PST tomorrow work for all parties for a meet and confer?

Thanks,

Teresa

On Jul 23, 2023, at 10:14 PM, Olivier H. Reiher <oreiher@staffordlaw.com> wrote:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

I have the ability to meet and confer tomorrow. To clarify, I would like to point out that MHF Opco LLC never received a 30(b)(6) subpoena; rather, Brian Slater was served personally under FRCP 45 in the latest subpoena.

Olivier

STAFFORD ROSENBAUM LLP Celebrating 140 Years of Excellence	<p>Olivier H. Reiher oreiher@staffordlaw.com 414.982.2888 (direct) 608.698.4741 (cell) Fax. 414.982.2889 1200 North Mayfair Road, Suite 430 Milwaukee, Wisconsin 53226-3282 www.staffordlaw.com Stafford Blogs LinkedIn</p> <p>Wisconsin member firm of ALFA International, the premiere global network of independent law firms.</p>
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From: Michael Richman <mrichman@Steinhilberswanson.com>
Sent: Sunday, July 23, 2023 2:40 PM
To: William Noall <wnoall@Gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>
Cc: Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@Gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Shara Larson <shara@ghandilaw.com>; lks@ghandilaw.com; jgwent@hollandhart.com; Olivier H. Reiher <oreiher@staffordlaw.com>; David Hollander <DHollander@staffordlaw.com>; Douglas Poland <dpoland@staffordlaw.com>; Erin Deeley <EDeeley@staffordlaw.com>; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; Nicole K. Bailey <nbailey@staffordlaw.com>
Subject: [External] - RE: [EXTERNAL] RE: Meet and Confer Communication

Bill: JWN has identified Jesse Windrix as their 30(b)(6) witness and MHF Opco has identified Brian Slater. The Debtor has told us they may (but have not yet definitively) identified Nick Rubin and Eric Hillman. The Debtor must give us reasonable notice of their 30(b)(6) witness(es) because we have the right to name another (which we cannot do without knowing who they designate). Whether or not Rule 30(b)(6) requires that the witness be identified in advance or not, no one but Empery has suggested a right to surprise other parties by showing up at a deposition with a witness who is not disclosed until they get sworn in, and I have never seen that kind of position taken in my long career. That said, and leaving aside the other reasons why reasonable notice of the designee should be provided, if you are proposing that we may depose

Ryan Lane in exchange for our dropping our request for a 30(b)(6) witness from Empery, we are willing to do that.

No deposition schedule has been set. What I said yesterday was that we had floated out the outline of dates and witnesses (mostly via yesterday's email) to get feedback from counsel after they could confer with their clients. To be clear, we are inviting feedback from counsel to JWN and MHF Opco, to the extent we have not already done so, and reiterating that request as to Debtor and Empery, in reference to the email yesterday.

We are agnostic as to the order of depositions of Windrix, Slater and Jungsberger via Zoom (if he responds to the subpoena) in their proposed bracket of time on July 26 – 28, and we are open to conducting more than one in a day depending on schedules (so that it need not occur on all three days). We believe that Debtor's witnesses (depending on how many are designated under 30(b)(6) should be conducted in person in Las Vegas on August 3 and 4, and that Drexler and Lane should be in person in Las Vegas on August 7 and 8. The order of these within each bracket of time is open to discussion. Your note below indicates that Lane is available in New York on August 4. Please let us know if he can be available in Las Vegas on August 7 or 8. Given the number of lawyers involved (and where they are based), and the venue of the case, Las Vegas would be much more convenient for his in person deposition to more people. Moreover, since Lane will be in Las Vegas for the trial as your designated trial witness, there should be no objection to his appearing there for deposition.

You have not identified a witness from among those who signed consent settlements, nor proposed how and where that would be scheduled. No one has identified a witness identified by Drexler as a "source" of information, nor proposed how and where that would be scheduled. I suggest that this information be provided immediately so that we can move forward to finalize the schedule. If you or others plan on dropping such witnesses, then please disclose that immediately.

Every party providing discovery provided discovery after the initial July 19 deadline, including Empery, which made a supplemental production yesterday. Your statement that Drexler's production was "tardy" applies to everyone, including your client, if that is how you read the scheduling order. In fact, the scheduling order required everyone's best efforts to finish by July 19, and that is what I believe everyone did. Additionally, every party, including Empery, asserted objections and "refused" to produce certain documents and information. We are studying those and expect to take these up in meet and confer meetings, once we can determine what has and has not been produced notwithstanding the objections. Your assertions therefore that Drexler's right to assert objections constitute a "refusal to respond" is false and disingenuous, because your client and all the other parties are guilty of the same transgressions of the rules of which you accuse Drexler.

I did not see anything further from you on your proposal for a deadline to make expert witness disclosures. I propose that we set August 10 as the deadline for both expert witness disclosures and the identification of trial witnesses (including experts), and that any identified trial witness who has not been previously deposed will, at the option of any parties, sit for a deposition before trial. I assume there will be very few of those, perhaps none, and that there is more than enough time to do that before the August 21 start of trial, without affecting the trial schedule.

In response to your request for a meet and confer telephone call tomorrow, I can be available for a call at 11 a.m. pacific time or later, provided you agree that the discussion will encompass deficiencies that we see in Empery's production, as well as the deficiencies you claim from Drexler's production. Michael

Michael P. Richman

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<image001.jpg>

From: William Noall <wnoall@Gtg.legal>

Sent: Saturday, July 22, 2023 3:52 PM

To: Michael Richman <mrichman@Steinhilberswanson.com>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>

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<brian@brianshapirolaw.com>; Shara Larson <shara@ghandilaw.com>;
<lks@ghandilaw.com>; jgwent@hollandhart.com; Olivier H. Reiher
<oreiher@staffordlaw.com>; dhollander@staffordlaw.com; Douglas Poland
<dpoland@staffordlaw.com>; edeeley@staffordlaw.com; Jeffrey Sternklar
<jeffrey@sternklarlaw.com>; nbailey@staffordlaw.com

Subject: RE: [EXTERNAL] RE: Meet and Confer Communication

Michael,

Thank you for responding to my email. Please advise the dates of currently scheduled depositions or outline of JWN, MHF, and perhaps Peter Jungsberger depositions between July 26-28 so that we may arrange to attend.

It is you who are trying to impose a requirement on all the non-movants to identify their 30(b)(6) witnesses prior to deposition. I cannot fathom how the designee impacts the date of deposition. Whether the witness is Ryan Lane or other witness or witnesses, the topics of inquiry are the same. Empery has no legal obligation to identify its designated witness or witnesses prior to the deposition, and designee(s) may change based on availability. Empery's 30(6) designee(s) and counsel are available for deposition on August 4, 2023 via Zoom, or you are able to attend live in New York.

It is irrelevant whether you "expect Empery to produce Mr. Lane for deposition." I'll remind you again, you sought the deposition of a 30(b)(6) witness, Ryan Lane and Tim Silver in your discovery plan. Based upon all of the circumstances, the court gave you a 30(b)(6) deposition of Empery. Now you say you want to depose Ryan Lane. If you'd prefer to depose Ryan Lane and not a 30(b)(6) designee, something you have not yet requested, please let me know and we will consider that request. The only thing that is clear is that you are entitled to a 30(b)(6) deposition, no other depositions.

Mr. Drexler filed the motion to appoint trustee. Empery does not know what evidence you intend to present to support your motion. You said to me you had the right to take discovery to try to find evidence supporting your case. However, you are limited by court determinations and applicable rules. It is impossible to identify all possible witnesses for trial. Michael, as to expert witnesses, you are correct. Let's just follow the applicable bankruptcy rules in this district.

You accuse me of gamesmanship, but we are following the rules. Indeed, Empery agreed to produce documents to each of Mr. Drexler's discovery request, despite the fact that the vast majority were overbroad and sought irrelevant information. We timely produced 6,585 documents consisting of 49,919 pages in response to the

discovery Mr. Drexler propounded, as well as a timely and substantial privilege log. By comparison, Mr. Drexler refused to respond, whatsoever, to more than a dozen discovery requests (some of which were analogues of your own request). In addition to expressly refusing to produce documents relevant to Emery's defense, Mr. Drexler tardily produced a total of 73 documents consisting of 744 pages (537 of which consisted of a single spreadsheet), almost none of which are responsive to the discovery requests. Please advise of your availability for a meet and confer Monday morning regarding your incomplete discovery requests.

Finally, despite our multiple requests to date, you still have not provided potential dates that Mr. Drexler (the movant) is available to sit for his deposition? What dates is he available?

Bill

From: Michael Richman <mrichman@Steinhilberswanson.com>
Sent: Saturday, July 22, 2023 8:40 AM
To: William Noall <wnoall@Gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>
Cc: Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapiro.com>; Shara Larson <shara@ghandilaw.com>; lks@ghandilaw.com; jgwent@hollandhart.com; Olivier H. Reiher <oreiher@staffordlaw.com>; dhollander@staffordlaw.com; Douglas Poland <dpoland@staffordlaw.com>; edeeley@staffordlaw.com; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; nbailey@staffordlaw.com
Subject: RE: [EXTERNAL] RE: Meet and Confer Communication

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Bill: I initiated this meet and confer email chain yesterday in order to facilitate the proposal of a consensual deposition schedule for the period July 24 – August 8, as we have all agreed. We have a general outline that would, counsel and witness schedules permitting, schedule witnesses for JWN, MHF, and perhaps Peter Jungsberger over the period July 26-28 by Zoom. Depositions of Debtor and Emery witnesses (likely Rubin, Hillman and Lane, if we are able to resolve the dispute being aired in these emails), and

of Mr. Drexler, will be proposed to be scheduled in person from August 3 – 8 in Las Vegas (and excluding the intervening weekend).

There are other witnesses provided for in the scheduling order, but who have not yet been identified to us by Debtor or Empery, including nearly all the 30(b)(6) witnesses, who may also be placed in the July 26-28 period. In order to finalize an agreed schedule, we obviously need all the witness names. (It is not clear to me why you made what sounds like a pejorative reference to what you believe John Fiero asked me two weeks ago about the schedule for Mr. Drexler's deposition. John and I discussed it, and I believe that he had no issue with my suggestion that we defer the scheduling until it can be made part of the overall deposition schedule referred to herein.)

We appreciate that prior to the July 14 status conference, parties were unable to designate their 30(b)(6) witnesses without our identifying the issues for such depositions as provided by the rule. Counsel to Debtor and Empery made that argument at the July 14 status conference, and in response the Court directed that we provide specifications of the issues by July 19. Our rule 30(b)(6) identifications of issues for depositions were served last Tuesday, July 18 (a day earlier than required by the Court). We have since requested more than once that counsel for such entities now identify their witnesses. Yet as of today, July 22, with the exception of JWN, no party who received a 30(b)(6) notice has identified their 30(b)(6) witnesses. Empery's failure to name its 30(b)(6) witness is especially telling in the context of your email, and the issues raised herein.

You write correctly that the Court did not hold that anyone had a right to depose any "potential" witness. But that is not what we requested in any of our meet and confer emails. We are seeking to depose ACTUAL trial witnesses who might not be on the limited witness list that the Court adopted in weighing the competing discovery plans. That is why we served interrogatory requests for trial witnesses. In response, Empery has in fact identified Ryan Lane as a **definite**, not potential, trial witness. As you know, and as I informed Mr. Garman on July 17 and 18, we expect Empery to produce Mr. Lane for deposition. Lane's conduct (including text messages) was a major precipitating cause for the investigation which led to the filing of the Trustee Motion, and his subsequent conduct continues to be material to cause for the appointment of a trustee. It is inconceivable to us that the Court intended to permit Empery to shield him from pretrial deposition in whole, or in part.

You argue that the Court's determination of the discovery schedule from the competing discovery plans is final and unalterable, and therefore we parties cannot by a meet and confer process agree to pretrial depositions of trial witnesses who are not otherwise scheduled to be deposed. Yet in the same email you propose to change the assertedly unalterable scheduling order to add a deadline for expert witness disclosures, which is also not addressed in any discovery plan or in the Court's scheduling order. There should be no issue among us that fair trials are the result of

pretrial discovery of trial witnesses and expert witnesses, and agreement should be reached on both items without a need to seek judicial intervention. We have no objection to setting a deadline for expert witness disclosures, provided that the Debtor and Empery make trial witnesses available for pretrial depositions, if they are not otherwise already in the schedule.

Your comments about our motives in serving our 30(b)(6) issues on Empery are incorrect and irrelevant. It is obvious from your response, however, that you believe that if you name Lane as your 30(b)(6) witness, you will object to our questioning him about anything pertaining to his trial testimony that might be outside the 30(b)(6) issues, and that you will require another deposition. You then assert that this will delay the schedule. It is of course ridiculous to depose Lane twice. You cannot accuse us of seeking to delay if you make a tactical decision to require a second deposition of Ryan Lane. There is more than enough time to depose Lane as part of the overall schedule. We have not proposed to and do not seek to delay the trial.

The Court has requested pleadings on discovery disputes be filed on Monday, July 24. If we cannot reach agreement, then the Court can tell us whether it intended to preclude pretrial depositions of the limited number of persons who could conceivably be identified as trial witnesses, but who might not be 30(b)(6) witnesses or otherwise in the discovery schedule. It is possible that this issue is limited to Mr. Lane. Your continued refusal to name Lane as a 30(b)(6) witness or agree to produce him for pretrial deposition, either of which would mitigate or obviate a significant part of the dispute here, smacks of litigation gamesmanship. I urge you to reconsider. Michael

Michael P. Richman

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<image001.jpg>

From: William Noall <wnoall@Gtg.legal>
Sent: Friday, July 21, 2023 6:45 PM
To: Michael Richman <mrichman@Steinhilberswanson.com>; Jason Rosell <jrosell@pszjlaw.com>; Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>
Cc: Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; Gregory Garman <Ggarman@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Shara Larson <shara@ghandilaw.com>; lks@ghandilaw.com; jgwent@hollandhart.com; Olivier H. Reiher <oreiher@staffordlaw.com>; dhollander@staffordlaw.com; Douglas Poland <dpoland@staffordlaw.com>; edeeley@staffordlaw.com; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; nbailey@staffordlaw.com
Subject: RE: [EXTERNAL] RE: Meet and Confer Communication

Michael,

We submitted competing discovery plans to the judge. The judge ruled on what party discovery was allowed. She never ruled, let alone suggested, that parties were permitted to depose any potential witness. In fact, a 30(b)(6) deposition is intended to capture the knowledge know to the entity and therefore carefully crafted 30(b)(6) notices efficiently gather necessary information without the need for multiple depositions. Emery will present a witness or witnesses that can testify to the topics.

It is now obvious that you crafted topics not within the spirit of Rule 30(b)(6), but instead in the hopes that Mr. Lane will be the designee so that you could ask for additional depositions. It should be noted that if you wanted testimony on additional topics, you should have crafted the notice differently. Whatever displeasure you are expressing is the result of your tactical decision and cannot be used as a delay tactic and an attempt to jockey for additional depositions after the judge made up her mind and ruled by adopting, for the most part, the discovery plan submitted by the non-moving parties.

As Debtor commented, Emery does not know the exact witnesses or evidence it will offer until after Drexler puts up his case/disclosures the actual basis of his case. On behalf of Emery, we will agree to a disclosure date for expert witnesses.

Please confirm that Mr. Drexler has completed his production of documents, and when he is available for his deposition and where? John Fiero asked you this last week. What is the answer?

Bill

From: Michael Richman <mrichman@Steinhilberswanson.com>
Sent: Friday, July 21, 2023 2:57 PM
To: Samuel A. Schwartz <saschwartz@nvfirm.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>
Cc: Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; William Noall <wnoall@Gtg.legal>; Gregory Garman <Ggarman@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Shara Larson <shara@ghandilaw.com>; lks@ghandilaw.com; jgwent@hollandhart.com; Olivier H. Reiher <oreiher@staffordlaw.com>; dhollander@staffordlaw.com; Douglas Poland <dpoland@staffordlaw.com>; edeeley@staffordlaw.com; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; nbailey@staffordlaw.com
Subject: RE: [EXTERNAL] RE: Meet and Confer Communication

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Sam, your asserted need to understand more of the case is irrelevant to your ability to agree that all trial witnesses should be subject to pretrial discovery. There is time and opportunity to work that into the existing schedule without moving the trial dates.

From: Samuel A. Schwartz <saschwartz@nvfirm.com>
Sent: Friday, July 21, 2023 4:48 PM
To: Michael Richman <mrichman@Steinhilberswanson.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; to: Dylan Ciciliano <dciciliano@gtg.legal>
Cc: Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; William Noall <wnoall@gtg.legal>; cc: Gregory Garman <Ggarman@gtg.legal>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Shara Larson <shara@ghandilaw.com>;

lks@ghandilaw.com; jgwent@hollandhart.com; Olivier H. Reiher
oreiher@staffordlaw.com; dhollander@staffordlaw.com; Douglas Poland
dpoland@staffordlaw.com; edeeley@staffordlaw.com; Jeffrey Sternklar
jeffrey@sternklarlaw.com; nbailey@staffordlaw.com

Subject: Re: [EXTERNAL] RE: Meet and Confer Communication

Michael, this is your motion, and we do not yet understand the facts of your case. This isn't the Debtor's case to prosecute, and until we know the universe of what Drexler intends to present, I cannot answer your question.

Samuel A. Schwartz, Esq.

Schwartz Law, PLLC

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From: Michael Richman <mrichman@Steinhilberswanson.com>
Date: Friday, July 21, 2023 at 1:42 PM
To: "Samuel A. Schwartz" <saschwartz@nvfirm.com>, Gabrielle Hamm <GHamm@nvfirm.com>, Christina Grill <cgrill@nvfirm.com>, Michael Sturm <MSturm@nvfirm.com>, "to: Dylan Ciciliano" <dciciliano@gtg.legal>
Cc: Emily Anderson <eanderson@nvfirm.com>, Susan Roman <sroman@nvfirm.com>, William Noall <wnoall@gtg.legal>, Greg Garman <Ggarman@gtg.legal>, Teresa Pilatowicz <tpilatowicz@gtg.legal>, Jason Rosell <jrosell@pszjlaw.com>, John Fiero <jfiero@pszjlaw.com>, Peter Nowak

<PNowak@Steinhilberswanson.com>, Brian Shapiro
<brian@brianshapirolaw.com>, Shara Larson <shara@ghandilaw.com>,
"lks@ghandilaw.com" <lks@ghandilaw.com>, Joseph Went
<jgwent@hollandhart.com>, "Olivier H. Reiher" <oreiher@staffordlaw.com>,
"dhollander@staffordlaw.com" <dhollander@staffordlaw.com>, Douglas
Poland <dpoland@staffordlaw.com>, "edeeley@staffordlaw.com"
<edeeley@staffordlaw.com>, Jeffrey Sternklar <jeffrey@sternklarlaw.com>,
"nbailey@staffordlaw.com" <nbailey@staffordlaw.com>

Subject: RE: [EXTERNAL] RE: Meet and Confer Communication

Sam: I understand your response, but the question you did not answer is whether you agree to pretrial deposition discovery of trial witnesses or not. You did not accept our proposal or propose an alternative. If we need to seek relief from the Court on Monday, I want to be clear about where this stands. Michael

From: Samuel A. Schwartz <saschwartz@nvfirm.com>
Sent: Friday, July 21, 2023 3:34 PM
To: Michael Richman <mrichman@Steinhilberswanson.com>; Gabrielle Hamm <GHamm@nvfirm.com>; Christina Grill <cgrill@nvfirm.com>; Michael L. Sturm <MSturm@nvfirm.com>; to: Dylan Ciciliano <dciciliano@gtg.legal>
Cc: Emily Anderson <eanderson@nvfirm.com>; Susan Roman <sroman@nvfirm.com>; William Noall <wnoall@gtg.legal>; cc: Gregory Garman <Ggarman@gtg.legal>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; Jason Rosell <jrosell@psjlaw.com>; John Fiero <jfiero@psjlaw.com>; Peter Nowak <PNowak@Steinhilberswanson.com>; Brian Shapiro <brian@brianshapirolaw.com>; Shara Larson <shara@ghandilaw.com>; lks@ghandilaw.com; jgwent@hollandhart.com; Olivier H. Reiher <oreiher@staffordlaw.com>; dhollander@staffordlaw.com; Douglas Poland <dpoland@staffordlaw.com>; edeeley@staffordlaw.com; Jeffrey Sternklar <jeffrey@sternklarlaw.com>; nbailey@staffordlaw.com
Subject: Re: [EXTERNAL] RE: Meet and Confer Communication

Michael, thank you for your email. I believe there is an interrogatory directed at the question you raise below. The debtor will respond accordingly, as today it cannot predict all of its witnesses until the debtor better understands Mr. Drexler's case and his evidence.

Samuel A. Schwartz, Esq.

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601 East Bridger Avenue

Las Vegas, NV 89101

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SASchwartz@nvfirm.com

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This email message is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521 and is legally privileged. It is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited.

From: Michael Richman <mrichman@Steinhilberswanson.com>
Date: Friday, July 21, 2023 at 11:56 AM
To: Gabrielle Hamm <GHamm@nvfirm.com>, Christina Grill <cgrill@nvfirm.com>, Michael Sturm <MSturm@nvfirm.com>, "to: Dylan Ciciliano" <dciciliano@gtg.legal>
Cc: "Samuel A. Schwartz" <saschwartz@nvfirm.com>, Emily Anderson <eanderson@nvfirm.com>, Susan Roman <sroman@nvfirm.com>, William Noall <wnoall@gtg.legal>, Greg Garman <Ggarman@gtg.legal>, Teresa Pilatowicz <tpilatowicz@gtg.legal>, Jason Rosell <jrosell@pszjlaw.com>, John Fiero <jfiero@pszjlaw.com>, Peter Nowak <PNowak@Steinhilberswanson.com>, Brian Shapiro <brian@brianshapirolaw.com>, Shara Larson <shara@ghandilaw.com>, "lks@ghandilaw.com" <lks@ghandilaw.com>, Joseph Went <jgwent@hollandhart.com>, "Olivier H. Reiher" <oreiher@staffordlaw.com>, "dhollander@staffordlaw.com" <dhollander@staffordlaw.com>, Douglas Poland <dpoland@staffordlaw.com>, "edeeley@staffordlaw.com" <edeeley@staffordlaw.com>, Jeffrey Sternklar <jeffrey@sternklarlaw.com>, "nbailey@staffordlaw.com" <nbailey@staffordlaw.com>
Subject: [EXTERNAL] RE: Meet and Confer Communication

Counsel: I am addressing this primarily to counsel to Debtor and Empery, who appear to be the only parties actively contesting the Trustee Motion, but I welcome comments from counsel to other parties (including indicating you intend to oppose the motion, if you do).

It is axiomatic that trial witnesses be made available for pretrial discovery. The competing discovery plans filed by parties prior to the status conference of July 10 did not address discovery with respect to trial witnesses, and that issue was not discussed at the status conference or addressed by the Court. We requested in interrogatories that the Debtor and Empery identify their trial witnesses. Empery identified Ryan Lane, and the Debtor provided a general reservation of rights pending the completion of discovery.

While we assumed that parties' trial witnesses would be co-extensive with the witnesses subject to discovery, the email exchanges among us earlier this week pertaining to the designation of Rule 30(b)(6) witnesses suggests that that is not the case. For example, were Empery to designate Tim Silver as their Rule 30(b)(6) witness, they could nevertheless (apparently) call Ryan Lane as a trial witness without presenting him for a pretrial deposition. If Empery does designate Lane, they could argue that the deposition be limited to the 30(b)(6) issues, rather than generally to any matters on which he might testify at trial (including those identified in Empery's interrogatory responses). Each of Empery and Debtor could also designate witnesses for trial who were not otherwise provided for pretrial depositions. Drexler could do so as well.

We think that the best way to do address this flaw (especially as we now need to turn our attention to setting a deposition schedule) is for us to agree today on a deadline early next week to identify witnesses for trial. Any witnesses identified who are not already among the Rule 30(b)(6) witnesses or other identified deponents shall be subject to deposition and worked into the deposition schedule. Any persons not identified by the deadline shall be barred from testimony at trial, absent the Court's determination of an exception for cause. Given the rollout of document production, and the likely need for parties to review documents before making final decisions on witnesses, we suggest the deadline be the close of business Tuesday, July 25.

Thank you for your consideration. Michael Richman

Michael P. Richman

Steinhilber Swanson LLP

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Madison, WI 53703-2732

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<image002.jpg>

EXHIBIT H

EXHIBIT H

From: Michael Richman
Sent: Tuesday, July 18, 2023 6:00 PM
To: Gabrielle Hamm; Dylan Ciciliano; Jason Rosell; John Fiero; Gregory Garman; William Noall; Teresa Pilatowicz; Peter Nowak; Michael Jurkash; Day, Jared A. (USTP); Brian Shapiro
Cc: Samuel A. Schwartz; Bryan Lindsey; Nicholas Rubin; Susan Roman
Subject: RE: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

Counsel: The matters for examination as to each 30(b)(6) witness are set forth below:

Empery Tax Efficient, LP

In accordance with Fed. R. Civ. P. 30(b)(6), made applicable to contested matters by Fed. R. Bankr. P. 9014(c) and 7030, Ryan Drexler designates the following matters for the examination of Empery Tax Efficient, LP ("Empery"):

- A. Ryan Lane's communications with other persons or entities regarding MusclePharm Corporation's (the "Debtor") management of post-petition business transactions and relationships with vendors, suppliers, and customers.
- B. The use of debtor-in-possession financing for the payment of administrative expenses and other post-petition liabilities, and for business operations, including the Debtor's efforts to build inventory.
- C. The value of the Debtor's business as a going concern, or the value of the Debtor's assets, in a sale transaction under 11 U.S.C. § 363.
- D. Ryan Lane's communications with Debtor's directors, officers and employees, including Nicholas Rubin.
- E. Ryan Lane's sworn declaration that Drexler was involved in contacting Amy Lane, the Westport Board of Education, or any of Mr. Lane's neighbors, or maintained an email and Facebook account for Wendy Bloom.

If Drexler is required to produce any information or testify about the United States Securities and Exchange Commission ("SEC") investigation in the Debtor and certain of its officers and directors, including Case No. 23-cv-5102 (C.D. Cal.), Drexler reserves his right to examine Empery's designee about all communications between Empery and the SEC.

MusclePharm Corporation

In accordance with Fed. R. Civ. P. 30(b)(6), made applicable to contested matters by Fed. R. Bankr. P. 9014(c) and 7030, Ryan Drexler designates the following matters for the examination of MusclePharm Corporation (the "Debtor"):

- A. The Debtor's business transactions and relationships with vendors, suppliers, and customers, including the price the Debtor pays for protein components and the price at which the Debtor sells its products.
- B. The use of debtor-in-possession financing for the payment of administrative expenses and other post-petition liabilities, and for business operations, including the Debtor's efforts to build inventory.
- C. The value of the Debtor's business as a going concern, or the value of the Debtor's assets, in a sale transaction under 11 U.S.C. § 363.
- D. The relationship and communications between or among any of the Debtor, Ryan Lane, and Nicholas Rubin.

If Drexler is required to produce any information or testify about the United States Securities and Exchange Commission ("SEC") investigation in the Debtor and certain of its officers and directors, including Case No. 23-cv-5102 (C.D. Cal.), Drexler reserves his right to examine the Debtor's designee about all communications between the Debtor and the SEC.

JW Nutritional, LLC

In accordance with Fed. R. Civ. P. 30(b)(6), made applicable to contested matters by Fed. R. Bankr. P. 9014(c) and 7030, Ryan Drexler designates the following matters for the examination of JW Nutritional, LLC (the "JW"):

- A. JW's communications with other persons or entities regarding MusclePharm Corporation's (the "Debtor") management of post-petition business transactions and relationships with vendors, suppliers, and customers.

- B. The Debtor's business transactions and relationships with JW, and other vendors, suppliers, and customers, including the price the Debtor pays for protein components and the price at which the Debtor sells its products.
- C. The value of the Debtor's business as a going concern, or the value of the Debtor's assets, in a sale transaction under 11 U.S.C. § 363.

MHF Opco, LLC

In accordance with Fed. R. Civ. P. 30(b)(6), made applicable to contested matters by Fed. R. Bankr. P. 9014(c) and 7030, Ryan Drexler designates the following matters for the examination of MHF Opco, LLC (the "Opco"):

- D. Opco's communications with other persons or entities regarding MusclePharm Corporation's (the "Debtor") management of post-petition business transactions and relationships with vendors, suppliers, and customers.
- E. The Debtor's business transactions and relationships with Opco, and other vendors, suppliers, and customers, including the price the Debtor pays for protein components and the price at which the Debtor sells its products.
- F. The value of the Debtor's business as a going concern, or the value of the Debtor's assets, in a sale transaction under 11 U.S.C. § 363.

Please let us know if you have any questions. Otherwise, we suggest that each party name their 30(b)(6) witness and that that information be included in the scheduling order. Thank you. Michael

Michael P. Richman

Steinhilber Swanson LLP

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 Madison, WI 53703-2732
 Direct: [\(608\) 709-5998](tel:(608)709-5998)
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From: Gabrielle Hamm <GHamm@nvfirm.com>

Sent: Monday, July 17, 2023 8:48 PM

To: Michael Richman <mrichman@steinhilberswanson.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Gregory Garman <Ggarman@Gtg.legal>; William Noall <wnoall@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Peter Nowak <PNowak@Steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapiro law.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: RE: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

I don't disagree that you can name your individual witness, but you do not get to demand identification of the Debtor's 30(b)(6) witness(es) to assist you in doing so when you haven't described the matters for examination as required by the

rule. When you describe the deposition topics, the Debtor will select the witness best suited for each topic. I don't understand where the disagreement lies because the law on 30(b)(6) depositions is well-established. The sooner you describe the matters for examination, the sooner we can identify witnesses and get the deposition schedule in place.

Gabrielle A Hamm
702-754-1963



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From: Michael Richman <mrichman@Steinhilberswanson.com>

Sent: Monday, July 17, 2023 5:08 PM

To: Gabrielle Hamm <GHamm@nvfirm.com>; Dylan Ciciliano <dciciliano@Gtg.legal>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Gregory Garman <Ggarman@Gtg.legal>; William Noall <wnoall@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Peter Nowak <PNowak@Steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapirolaw.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: RE: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

The Debtor gets to name its 30b6 witness and we get to name the second witness of the debtor. I don't understand your statement that there was no condition that the named witness be a different person. Please clarify that whether it is one or two people, it up to us and not to the Debtor.

From: Gabrielle Hamm <GHamm@nvfirm.com>

Sent: Monday, July 17, 2023 6:57 PM

To: Dylan Ciciliano <dciciliano@Gtg.legal>; Michael Richman <mrichman@Steinhilberswanson.com>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Gregory Garman <Ggarman@Gtg.legal>; William Noall <wnoall@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Peter Nowak <PNowak@Steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapirolaw.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: RE: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

With respect to the Debtor, the Court authorized depositions of a 30(b)(6) witness and one other person at page 23:1-6. There was no condition that the named witness be a different person than the 30(b)(6) witness. We also reject your position that the Debtor should identify a witness based on a blanket reference to prior communications and pleadings. The Debtor's obligation to select one or more representatives does not arise until the matters for examination are described with specificity.

Thank you,

Gabrielle A Hamm, Esq.

Of Counsel
Schwartz Law, PLLC
601 East Bridger Avenue
Las Vegas, Nevada 89101
Direct: 702-754-1963
ghamm@nvfirm.com



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From: Dylan Ciciliano <dciciliano@Gtg.legal>

Sent: Monday, July 17, 2023 4:28 PM

To: Michael Richman <mrichman@Steinhilberswanson.com>; Gabrielle Hamm <GHammer@nvfirm.com>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Gregory Garman <Ggarman@Gtg.legal>; William Noall <wnoall@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Peter Nowak <PNowak@Steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapirolaw.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: RE: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

With respect to Empery, the July 10, 2023, transcript is clear. The Court adopted the non-movants proposal and found that Mr. Drexler can take one FRCP 30(b)(6) witness of Empery, nothing else. Page 23:11-18. Mr. Schwartz confirmed that point again at page 28:15-25.

Dylan

Dylan T. Ciciliano, Esq.

Office: 725 777 3000 | Cellphone: 702 371 3256

Email: dciciliano@gtg.legal

From: Michael Richman <mrichman@Steinhilberswanson.com>

Sent: Monday, July 17, 2023 4:09 PM

To: Gabrielle Hamm <GHammer@nvfirm.com>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Gregory Garman <Ggarman@Gtg.legal>; William Noall <wnoall@Gtg.legal>; Teresa Pilatowicz <tpilatowicz@Gtg.legal>; Dylan Ciciliano <dciciliano@Gtg.legal>; Peter Nowak <PNowak@Steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapirolaw.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: RE: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Prior communications and pleadings covered our requests for 30b6 witnesses and other named witnesses. We had understood the Court to limit this to a 30b6 and one named witness (unless the named witness is in fact the 30b6 witness). This is the reason I have requested that parties identify their 30b6 witnesses. That should be easy enough to do and will avoid having to go back to the court on this issue.

Michael P. Richman

Steinhilber Swanson LLP

122 W. Washington Avenue, Suite 850
Madison, WI 53703-2732
Direct: [\(608\) 709-5998](tel:(608)709-5998)
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mrichman@steinhilberswanson.com
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From: Gabrielle Hamm <GHammer@nvfirm.com>

Sent: Monday, July 17, 2023 5:18 PM

To: Michael Richman <mrichman@steinhilberswanson.com>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Greg Garman <ggarman@gtg.legal>; William Noall <wnoall@gtg.legal>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; Dylan Ciciliano <dciciliano@gtg.legal>; Peter Nowak <PNowak@steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapiro.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: RE: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

Please explain what disconnects you mean. The only difference in the revised order and the one you signed off on last week is the requirement to identify the 30(b)(6) topics by 7/19, which comports with the judge's ruling and FRCP 30(b)(6). Under the rule, the initial burden is on the noticing party to describe the matters for examination with reasonable particularity so that the noticed party can identify the appropriate representative(s) and prepare them to give binding testimony on behalf of the company. Describing the matters for examination is a precondition to identifying witnesses.

Thank you,

Gabrielle A Hamm, Esq.

Of Counsel

Schwartz Law, PLLC

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From: Michael Richman <mrichman@Steinhilberswanson.com>

Sent: Monday, July 17, 2023 2:15 PM

To: Gabrielle Hamm <GHamm@nvfirm.com>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Greg Garman <ggarman@gtg.legal>; William Noall <wnoall@gtg.legal>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; Dylan Ciciliano <dciciliano@gtg.legal>; Peter Nowak <PNowak@Steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapirolaw.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: [EXTERNAL] RE: Revised Scheduling Order - MusclePharm

Counsel: There seems to be some disconnects between prior discussions and colloquy and the phrasing in the order as to deponents. This can be cleared up potentially without controversy if counsel identify by return email who their 30b6 deponents will be. Thank you. Michael Richman

Michael P. Richman

Steinhilber Swanson LLP

122 W. Washington Avenue, Suite 850

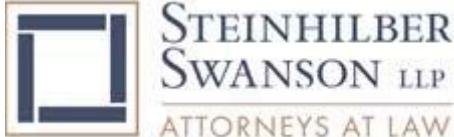
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From: Gabrielle Hamm <GHamm@nvfirm.com>

Sent: Monday, July 17, 2023 3:29 PM

To: Michael Richman <mrichman@Steinhilberswanson.com>; Jason Rosell <jrosell@pszjlaw.com>; John Fiero <jfiero@pszjlaw.com>; Greg Garman <ggarman@gtg.legal>; William Noall <wnoall@gtg.legal>; Teresa Pilatowicz <tpilatowicz@gtg.legal>; Dylan Ciciliano <dciciliano@gtg.legal>; Peter Nowak <PNowak@Steinhilberswanson.com>; Michael Jurkash <mjurkash@steinhilberswanson.com>; Day, Jared A. (USTP) <Jared.A.Day@usdoj.gov>; Brian Shapiro <brian@brianshapirolaw.com>

Cc: Samuel A. Schwartz <saschwartz@nvfirm.com>; Bryan Lindsey <BLindsey@nvfirm.com>; Nicholas Rubin <nrubin@force10partners.com>; Susan Roman <sroman@nvfirm.com>

Subject: Revised Scheduling Order - MusclePharm

All,

Good afternoon. Attached is a revised scheduling order updated to reflect the instructions from Friday's status conference and the August 21-22 dates for the trustee motion/PSA/disclosure statement hearing per the earlier emails, along with a redline to the version approved prior to the status conference. Comments invited.

Thank you,

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EXHIBIT I

EXHIBIT I

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18 *Attorneys for Emery Tax Efficient, LP as
19 Agent and Collateral Agent for certain
20 Secured Noteholders*

21 **UNITED STATES BANKRUPTCY COURT**

22 **DISTRICT OF NEVADA**

23 In re:

24 MUSCLEPHARM CORPORATION,

25 Debtor.

26 Case No.: 22-14422-NMC

27 Chapter 11

28 **EMPERY TAX EFFICIENT, LP'S RESPONSES AND OBJECTIONS TO RYAN
1 DREXLER'S OMNIBUS INTERROGATORIES, REQUESTS FOR PRODUCTION OF
2 DOCUMENTS, AND NOTICES OF DEPOSITION TO EMPERY TAX EFFICIENT, LP,
3 RYAN LANE, AND TIMOTHY SILVER**

4 Emery Tax Efficient, LP (“Emery”), by and through its counsel, the law firm of Garman
5 Turner Gordon, hereby provides its responses and objections to the discovery requests made by
6 Ryan Drexler (the “Drexler”) as follows:

7 **PRELIMINARY STATEMENT**

8 These responses are based solely on information presently known to Emery. Further
9 discovery may lead to additions to, changes in, or modifications of these responses. Accordingly,
10 these responses are being given without prejudice to Emery's right to produce subsequent

discovery evidence and to introduce the same at any future hearing. Empery hereby expressly reserves the right to amend and/or supplement these responses to the Requests.

3 Each response is subject to all appropriate objections, including competency, relevancy,
4 propriety, and admissibility, which would require the exclusion of any response set forth herein if
5 the question of materiality were asked of, or any response were made by a witness present and
6 testifying in Court. All such objections are expressly reserved. Further, the fact that any demand
7 herein has been answered shall not be taken as an admission of relevancy, admissibility, or any
8 fact set forth in the Requests.

GENERAL OBJECTIONS

10 A. Request to log all communications with counsel.

Drexler's discovery requests include requests that substantially seek the production of all communications Empery has had with its counsel that are regarding Drexler, and all documents and communications Empery's counsel had regarding Drexler. For instance, Drexler's Request for Production Number 5 seeks all documents and communications "regarding Ryan Drexler." Read literally, the request seeks every document or communication that mentions Drexler. As Empery is defined to include its counsel, that necessarily includes all of counsel's documents, communications, memos and notes that reference Drexler. This request also includes counsel's communications with Empery, as well as internal Empery communications discussing counsel's advice. Drexler has not asserted that privilege does not apply to those communications.

Instead, Drexler maintains that if Empery withholds these unambiguously privileged communications, they must be logged on a privilege log. Drexler has also requested or suggested that the Court conduct an *in camera* review of the entries on a privilege log.

23 Privilege logs are necessary “to inform other parties of the existence of documents that
24 may be relevant to a case but will not be turned over.” *Mayorga v. Ronaldo*, 606 F. Supp. 3d 1003,
25 1018 (D. Nev. 2022). Foremost, documents between Empery and its counsel are not relevant to
26 the case, but are only the subject of a privilege log because they have been requested by Drexler.
27 Furthermore, “the reason behind the requirement that parties specifically identify documents
28 through a privilege log is to allow them to describe the documents “in a manner that, without

1 revealing information itself privileged or protected, will enable other parties to assess the claim.”
 2 *Mayorga v. Ronaldo*, 606 F. Supp. 3d 1003, 1017 (D. Nev. 2022). Moreover, the failure to log a
 3 communication can result in a waiver, which one Nevada Court has found creates “a perverse
 4 incentive.” *Id.* Accordingly, privilege log requirements should be flexible and serve the purpose
 5 of placing counsel on notice that documents are being withheld for privilege. *Id.*

6 Preliminarily, more than 6,000 collected emails and documents have thus far been
 7 identified as being privileged—and primarily consist of communications between Empery and
 8 litigation/bankruptcy counsel regarding ongoing litigation against Debtor/Drexler. There is no
 9 mystery that Empery was communicating with counsel and there is no dispute that these
 10 communications are privileged. It is anticipated that a privilege log would be hundreds of pages
 11 and take dozens of hours to complete. The vast majority of these communications have nothing to
 12 do with the trustee motion. But of course, even if they did, they would be privileged and therefore
 13 not subject to discovery. The fact that Empery was speaking with counsel and the identity of that
 14 counsel may also reveal attorney work product. Finally, the mere existence of communications is
 15 neither material nor relevant.

16 Nearly all communications and documents exchanged between Empery and its counsel in
 17 this bankruptcy are responsive to Drexler’s requests, as most involve or relate to Drexler in one
 18 fashion or another. There is simply no reason why these documents should be logged. Drexler
 19 presumptively knows that Empery is communicating with counsel during the bankruptcy.

20 In addition, during the bankruptcy, Drexler has brought three complaints (or counterclaims)
 21 against Empery or its agents. Additionally, there is a pending state court action in New York
 22 between Empery and Drexler. Each and every communication and document exchanged with
 23 counsel related to those actions are expressly in regard to Drexler. Thus, literally every
 24 communication with counsel is responsive to Drexler’s request. Again, there is no mystery about
 25 the fact Empery had privileged communications with counsel.

26 Likewise, there was a series of transactions between Drexler, Debtor, and Empery in 2021
 27 and 2022. Each of those transactions resulted in hundreds of privileged communications containing
 28 documents and comments that are in regard to Ryan Drexler that were exchanged between Empery

1 and its counsel. The communications are undoubtedly privileged and irrelevant to the trustee
 2 motion.

3 Simply, there is no purpose behind requiring Empery to log each and every communication
 4 it has with its counsel that pertains to the bankruptcy or the litigations, especially when they are
 5 clearly privileged. To the extent that Empery claims a communication between it and third-parties
 6 (including other parties to this action) is privileged, Empery does not object to providing a privilege
 7 log. However, all other communications between it and its counsel should be exempt from being
 8 on a privilege log.

9 **B. The FRCP 30(b)(6) deposition notice fails to set forth categories of deposition with**
 10 **reasonable particularity.**

11 The FRCP 30(b)(6) deposition notice of Empery states that the topics for examination “all
 12 matters at issue in Ryan Drexler’s *Motion for the Appointment of a Chapter 11 Trustee*. ” The topic
 13 fails to meet the reasonable particularity the matters for deposition. See FRCP 30(b)(6) (“(6)

14 Notice or Subpoena Directed to an Organization. *In its notice or subpoena, a party* may name as
 15 the deponent a public or private corporation, a partnership, an association, a governmental agency,
 16 or other entity *and must describe with reasonable particularity the matters for examination.* ”);
 17 *Carlson v. Sam’s W., Inc.*, 217CV02882MMDGWF, 2018 WL 4094856, at *2 (D. Nev. Aug. 28,
 18 2018) (“Rule 30(b)(6) requires the noticing party to ‘describe with reasonable particularity the
 19 matters for examination.’”). “Reasonable particularity” requires the topics listed to be specific as
 20 to subject area and to have discernible boundaries.” *Nichols v. Credit Union*, 2018 WL 11404371,
 21 at *2 (D. Nev. Dec. 26, 2018)(emphasis added). “Further, if topics concern ‘discovery on
 22 discovery’ or complex data, ‘even greater specificity is required to ensure that the witness can
 23 prepare for the deposition, that the deposition is productive, and that the parties’ time is not wasted
 24 on topics that do not relate to core claims or defenses.’” *Id.* On its face, the notice is defective, as
 25 it “must describe with reasonable particularity the matters for examination.” It is not sufficient to
 26 merely state that every issue in the *Motion for the Appointment of a Chapter 11 Trustee*.

27 Courts have recognized the requirement to designate and prepare one or more corporate
 28 witnesses for a 30(b)(6) deposition is a taxing burden that is dependent upon the noticing party

1 providing topics with reasonable particularity. *See City of Baton Rouge/Par. of E. Baton Rouge*
 2 *Dep't of Fin. v. Centroplex Ctr. Convention Hotel, LLC*, CV 22-94-SDD-SDJ, 2022 WL 17682645,
 3 at *2 (M.D. La. Dec. 14, 2022) (“Compounding this failure, Catfish Queen not only had to produce
 4 documents in that short amount of time, but also designate and prepare one or more corporate
 5 witnesses for a Rule 30(b)(6) deposition—a burden that is often ‘taxing.’”); *Great Am. Ins. Co. of*
 6 *New York v. Vegas Const. Co.*, 251 F.R.D. 534, 540 (D. Nev. 2008). Failing to provide topics
 7 pursuant to FRCP 30(b)(6) prevents the party being deposed from being prepared. *Matthys v.*
 8 *Barrick Gold of N. Am., Inc.*, 2021 WL 3604834, at *2 (D. Nev. Aug. 13, 2021).

9 The deposition notice lacks any particularity, as “all matters at issue in Ryan Drexler’s
 10 *Motion for the Appointment of a Chapter 11 Trustee*” has no discernable boundaries and would
 11 require a deponent to be knowledgeable on every aspect of the case. Accordingly, the notice of
 12 deposition fails to satisfy FRCP 30(b)(6).

13 **C. Deposition Notices of Tim Silver and Ryan Lane.**

14 The Court permitted a single FRCP 30(b)(6) deposition of Empery. Accordingly, the
 15 notices to Tim Silver and Ryan Lane are not permitted.

16 **D. Disputed admissibility.**

17 Empery does not concede that any of the information and/or documents produced herein
 18 are, or will be, admissible into evidence. Empery does not intend to waive, but rather intends to
 19 preserve, each and every available objection to the use and admissibility of the information and
 20 documents that may be disclosed in Objection to the Requests.

21 **E. Documents outside Empery’s control.**

22 Empery objects to the Requests to the extent that they seek information outside the
 23 possession, custody, or control of Empery, especially to the extent that the subpoena seeks
 24 responses or information that is in the possession of Debtor.

25 **ANSWERS AND OBJECTIONS TO INTERROGATORIES**

26 **Interrogatory No. 1:** Identify each person providing information for the responses to these
 27 Interrogatories, the specific Interrogatory for which the person provided information, and the title
 28 and business address of each such person.

1 **Objection and Response to Interrogatory No. 1:**

2 The request seeks information that is not reasonably calculated to lead to the discovery of
 3 admissible evidence. Notwithstanding the objection, Timothy Silver.

4 **Interrogatory No. 2:** Identify all persons whom You know, or have reason to believe, have
 5 knowledge of any facts relevant to the issues described in the *Motion for the Appointment of a*
 6 *Chapter 11 Trustee* [ECF No. 447] (“Trustee Motion”).

7 **Objection and Response to Interrogatory No. 2:**

8 The interrogatory is vague and ambiguous as to “relevant issues” described in the Trustee
 9 Motion. This is especially the case since the Trustee Motion lacks any evidence in support
 10 thereof. Accordingly, Empery is unaware of what, if any, of the facts are that are “relevant to the
 11 issues” in the Trustee Motion. Subject to the objection, Ryan Drexler, Eric Hillman, Nick Rubin,
 12 Timothy Silver, and Ryan Lane would have knowledge of the facts that Empery believes are at
 13 issue.

14 **Interrogatory No. 3:** State the name, occupation, address, and telephone number of each witness
 15 (fact or expert) that You expect to call or rely upon at a hearing on the Trustee Motion together
 16 with a summary of the matters to be testified about within the knowledge of each such witness.

17 **Objection and Response to Interrogatory No. 3:**

18 This interrogatory is vague and ambiguous as to “call” or “rely” upon. Moreover, the
 19 request is premature as discovery is underway and Drexler has yet to reveal the basis of his
 20 allegations. Subject to the aforementioned objection and subject to supplementation based on
 21 discovery, Empery intends on calling movant Ryan Drexler, occupation unknown, c/o Michael
 22 Richman. It is anticipated that Mr. Drexler will testify that he has no evidence supporting the
 23 appointment of a trustee. Empery also intends on calling Mr. Lane to testify at the time of the
 24 hearing to describe the facts and circumstances behind “Text Messages” included in the Trustee
 25 Motion. He will likewise testify that the Trustee Motion, to the extent it includes allegations against
 26 Empery, is baseless. Empery reserves the right to call any witness identified by any other party.

27 **Interrogatory No. 4:** Provide an accounting of funds provided by the Lender (as described in the
 28 Final DIP Order) to the Debtor and all prepetition indebtedness “rolled-up” into the DIP Notes (as

1 described in the Final DIP Order) pursuant to any debtor-in-possession financing agreements
2 between You and the Debtor, including Exhibits A and B to the *Final Order Regarding Emergency*
3 *Motion for Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, and 364 and*
4 *Fed. R. Bankr. P. 4001(b) and 4001(d): (I) Authorizing the Debtor to Obtain Postpetition*
5 *Financing, (II) Granting Senior Secured Liens and Administrative Expense Claims, (III)*
6 *Determining Adequate Protection, (IV) Modifying the Automatic Stay, and (V) Granting Related*
7 *Relief* [ECF No. 296] (“Final DIP Order”).

8 **Objection and Response to Interrogatory No. 4:**

9 The request is vague, ambiguous, and nonsensical with respect to its reference to Exhibit
10 A to the Final DIP Order and the term “accounting”. Subject to the objection, and pursuant to
11 FRCP 33(d), see bates Empery-TT_0049900, Empery-TT_0049918.

12 **Interrogatory No. 5:**

13 Provide an accounting of all payments made to Prestige Capital Finance, LLC’s Claim
14 No. 14, including payments made to You in respect to Claim No. 14 as held by MP Collateral
15 LLC as evidenced by the *Transfer of Claim Other than for Security* [ECF No. 360].

16 **Objection and Response to Interrogatory No. 5:**

17 The request is vague and ambiguous with respect to accounting. Moreover, the request
18 seeks information that is not relevant to any claims or defenses to the Trustee Motion. Subject to
19 the objection, \$751,158.06, and pursuant to FRCP 33(d), see bates Empery-TT_0049913Empery-
20 TT_0049917, Empery-TT_0049906-Empery-TT_0049907.

21 **RESPONSES AND OBJECTIONS TO REQUESTS FOR PRODUCTION**

22 **Request No. 1:** Produce all documents and communications that You relied upon to respond to
23 the above Interrogatories.

24 **Objection to Request No. 1:**

25 The request is overbroad and unduly burdensome in that it seeks “all documents and
26 communications.” It is likewise vague as to “relied” upon.
27
28

1 Subject to the objection, after a reasonable search, Empery has produced responsive and
2 relevant documents and communications.

3 **Request No. 2:** Produce all documents and communications that refer or relate to any sale, auction,
4 appraisal, or valuation of any of the Debtor's assets, in whole or in part, either before or after the
5 Petition Date.

6 **Objection to Request No. 2:**

7 The request is overbroad and unduly burdensome in that it seeks "all documents and
8 communications." Subject to the objection, after a reasonable search, Empery has produced
9 responsive and relevant documents and communications.

10 **Request No. 3:** Produce all documents and communications that refer or relate to the desirability
11 of continuing the Debtor's business as a going concern.

12 **Objection to Request No. 3:**

13 The request is overbroad and unduly burdensome in that it seeks "all documents and
14 communications." The request is also vague as to the terms "desirability." Subject to the objection,
15 after a reasonable search, Empery has produced responsive and relevant documents and
16 communications.

17 **Request No. 4:** Produce all documents and communications that refer or relate to the retention of
18 Nicholas Rubin as the Debtor's independent director.

19 **Objection to Request No. 4:**

20 The request is overbroad and unduly burdensome in that it seeks "all documents and
21 communications." Moreover, the request seeks documents that are not in Empery's possession and
22 control. Subject to the objection, after a reasonable search, Empery has produced responsive and
23 relevant documents and communications in its possession, if any.

24 **Request No. 5:** Produce all documents and communications with Empery regarding Ryan Drexler.

25 **Objection to Request No. 5:**

26 The request is overbroad and unduly burdensome in that it seeks "all documents and
27 communications." The request as written extends to each and every communication related to
28 Drexler and expressly includes attorney client communications and work product. Therefore (1)

1 the burden of production outweighs any likely benefit and (2) the request seeks documents and
2 communications that are not relevant to any parties' claims or defenses and is therefore beyond
3 the scope of discovery. Subject to the objection, after a reasonable search, Empery has produced
4 responsive and relevant documents and communications.

5 **Request No. 6:** Produce all documents and communications that refer or relate to any new
6 customers to which the Debtor has sold products since the Petition Date.

7 **Objection to Request No. 6:**

8 The request is overbroad and unduly burdensome in that it seeks "all documents and
9 communications." Moreover, the request seeks documents that are not in Empery's possession and
10 control. Subject to the objection, after a reasonable search, Empery has produced responsive and
11 relevant documents and communications.

12 **Request No. 7:** Produce all documents and communications that refer or relate to interest
13 expressed by any customers to which the Debtor had the opportunity to sell products, but did not
14 sell products, since the Petition Date.

15 **Objection to Request No. 7:**

16 The request is overbroad and unduly burdensome in that it seeks "all documents and
17 communications." Moreover, the request seeks documents that are not in Empery's possession and
18 control. Subject to the objection, after a reasonable search, Empery is unaware of any responsive
19 and relevant documents and communications in its custody and control.

20 **Request No. 8:** Produce all documents and communications that refer or relate to marketing of the
21 Debtor's products.

22 **Objection to Request No. 8:**

23 The request is overbroad and unduly burdensome in that it seeks "all documents and
24 communications." Moreover, the request seeks documents that are not in Empery's possession and
25 control. Subject to the objection, after a reasonable search, Empery has produced responsive and
26 relevant documents and communications.

27 **Request No. 9:** Produce all documents and communications that refer or relate to any sellers to,
28 or purchasers from, the Debtor that have ceased doing business with the Debtor.

1 **Objection to Request No. 9:**

2 The request is overbroad and unduly burdensome in that it seeks “all documents and
 3 communications.” Moreover, the request seeks documents that are not in Empery’s possession and
 4 control. Empery is further unaware of which sellers or purchasers that the Debtor has ceased doing
 5 business with. Subject to the objection, after a reasonable search, Empery is unaware of any
 6 responsive and relevant documents and communications in its custody and control.

7 **Request No. 10:** Produce all documents and communications that refer or relate to increases or
 8 decreases in product inventory held by the Debtor or by JWN on the Debtor’s behalf.

9 **Objection to Request No. 10:**

10 The request is overbroad and unduly burdensome in that it seeks “all documents and
 11 communications.” Moreover, the request seeks documents that are not in Empery’s possession and
 12 control. Subject to the objection, after a reasonable search, Empery has produced responsive and
 13 relevant documents and communications.

14 **Request No. 11:** Produce all documents and communications that refer or relate to the Debtor’s
 15 engagement or termination of product manufacturers or contract manufacturers.

16 **Objection to Request No. 11:**

17 The request is overbroad and unduly burdensome in that it seeks “all documents and
 18 communications.” Moreover, the request seeks documents that are not in Empery’s possession and
 19 control. Subject to the objection, after a reasonable search, Empery is unaware of any responsive
 20 and relevant documents and communications in its custody and control.

21 **Request No. 12:** Produce all documents and communications supporting your sworn statement
 22 that “On February 8, 2023, I am informed and believe that an unknown individual contacted the
 23 Westport Board of Education, where I reside, and asked numerous school board members about
 24 my wife. This individual called the members’ mobile numbers from a blocked number and
 25 purported to be a New York Times Reporter. Given other events that occurred at the same time, I
 26 believe that Drexler was involved in the placing of these calls.” found at paragraph 5 of the
 27 *Declaration of Ryan Lane* [ECF No. 15-1], filed in *Drexler v. Silver*, Case No. 23-cv-00128 (D.
 28 Nev. March 24, 2023).

1 **Objection to Request No. 12:**

2 The request is overbroad and unduly burdensome in that it seeks “all documents and
 3 communications.” Subject to the objection, after a reasonable search, Empery has produced
 4 responsive and relevant documents and communications.

5 **Request No. 13:** Produce all documents and communications supporting your sworn statement
 6 that “On February 17, 2023, my wife received an anonymous letter addressed to her that alleged I
 7 had been unfaithful. I believe the letter was contrived or caused to be sent by Drexler.” found at
 8 paragraph 6 of the *Declaration of Ryan Lane* [ECF No. 15-1], filed in *Drexler v. Silver*, Case No.
 9 23-cv-00128 (D. Nev. March 24, 2023).

10 **Objection to Request No. 13:**

11 The request is overbroad and unduly burdensome in that it seeks “all documents and
 12 communications.” Subject to the objection, after a reasonable search, Empery has produced
 13 responsive and relevant documents and communications.

14 **Request No. 14:** Produce all documents and communications supporting your sworn statement
 15 that “On April 1, 2023, I am informed and believe that my neighbors received anonymous letters
 16 alleging that I had engaged in criminal behavior. Given the contentious nature of the various
 17 litigation with Drexler, as well as other facts, I believe that Drexler sent the letter to my neighbors.”
 18 found at paragraph 7 of the *Declaration of Ryan Lane* [ECF No. 15-1], filed in *Drexler v. Silver*,
 19 Case No. 23-cv-00128 (D. Nev. March 24, 2023).

20 **Objection to Request No. 14:**

21 The request is overbroad and unduly burdensome in that it seeks “all documents and
 22 communications.” Subject to the objection, after a reasonable search, Empery has produced
 23 responsive and relevant documents and communications.

24 **Request No. 15:** Produce all documents and communications supporting your sworn statement
 25 that “On April 5, 2023, a Facebook account using the name and picture of a 30-year Chicago
 26 Kirkland & Ellis LLP (“K&E”) law partner Wendy Bloom began posting about me in Westport
 27 community message boards. The fake Facebook Profile posts suggested that I was a danger to
 28 children in the community. After contacting Facebook, they confirmed that the account was

1 created from a Northern Nevada Internet Protocol (“IP”) address, but would not provide me the
 2 exact IP address. I have since received confirmation that K&E partner Wendy Bloom did not create
 3 the Facebooker. Wendy Bloom confirmed she still resides in the Chicago area. Likewise, I have
 4 not seen or heard of any individual named Wendy Bloom in my neighborhood, nor has anyone
 5 moved to my small neighborhood recently, as alleged in the posts. On April 14, 2023, I am
 6 informed and believed that the email address bloomwendy452@gmail.com emailed the Westport
 7 School District school board members. The email suggests that I am violent criminal and may be
 8 a danger to children and wanted to inform the school board ‘in the event that something happens
 9 involving Mr. Lane in the future . . . in case Mr Lane acts violent or erratic in the future.’ . . . Given
 10 the timing of the allegations, as well as other actions and information I have seen, I believe them
 11 to have been orchestrated by Drexler. . . .” found at paragraphs 9 through 15 of the *Declaration of*
 12 *Ryan Lane* [ECF No. 15-1], filed in *Drexler v. Silver*, Case No. 23-cv-00128 (D. Nev. March 24,
 13 2023).

14 **Objection to Request No. 15:**

15 The request is overbroad and unduly burdensome in that it seeks “all documents and
 16 communications.” Subject to the objection, after a reasonable search, Empery has produced
 17 responsive and relevant documents and communications.

18 **Request No. 16:** Produce all documents and communications supporting your sworn statement
 19 that “Drexler launched a clandestine campaign to intimidate me through anonymous
 20 communications to my spouse, my children’s school board, my neighbors, and members of the
 21 town in which I reside through posts on social media groups.” found at paragraph 14 of the
 22 *Declaration of Ryan Lane in Support of Emergency Motion to Enforce Intercreditor and*
 23 *Subordination Agreement Under Section 510(a) of the Bankruptcy Code* [ECF No. 508], filed in
 24 the Bankruptcy Case.

25 **Objection to Request No. 16:**

26 The request is overbroad and unduly burdensome in that it seeks “all documents and
 27 communications.” Subject to the objection, after a reasonable search, Empery has produced
 28 responsive and relevant documents and communications.

1 **Request No. 17:** To the extent text messages responsive to the above requests directed to You
2 were deleted from Your mobile phone and are unrecoverable from cloudbased or hard drive
3 backups, please immediately request from your service provider and produce a log of such text
4 messages containing the date, time, to, from, direction, and message type (i.e., text, picture/video,
5 etc.) for each message. Such logs may also be available to be generated directly by You through
6 Your online account, without requesting them from Your provider.

7 || Objection to Request No. 17:

8 The request seeks the creation or generation of documents by third-parties and is therefore
9 objectionable. The request further has a condition precedent that has not occurred. Empery has
10 produced responsive and relevant documents and communications.

11 || DATED this 19th day of July, 2023.

GARMAN TURNER GORDON LLP

/s/ Dylan T. Ciciliano
GREGORY E. GARMAN
WILLIAM M. NOALL
TERESA M. PILATOWICZ
DYLAN T. CICILIANO
7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
*Attorneys for Empery Tax Efficient, LP as
Agent and Collateral Agent for certain
Secured Noteholders*

**VERIFICATION OF EMPERY TAX EFFICIENT, LP'S RESPONSES AND
OBJECTIONS TO RYAN DREXLER'S OMNIBUS INTERROGATORIES TO EMPERY
TAX EFFICIENT, LP**

In my capacity as a Portfolio Manager with Empery Asset Management, LP, the investment advisor to EMPERY TAX EFFICIENT, LP, Creditor in the above-entitled matter; that I have read the foregoing responses to *Verification of Empery Tax Efficient, LP's Responses and Objections to Ryan Drexler's Omnibus Interrogatories to Empery Tax Efficient, LP*, and know the contents thereof; that the same is true of my own knowledge, except as to those matters stated on information and belief, and as to those matters, and believe them to be true.

Dated this 19 day of July 2023.



TIMOTHY SILVER, Portfolio Manager of
Empery Asset Management, LP, the
investment advisor to EMPERY TAX
EFFICIENT, LP

EXHIBIT J

EXHIBIT J

1 STEINHILBER SWANSON LLP

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9 **LAW OFFICE OF BRIAN D. SHAPIRO, LLC**

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17 *Counsel for Ryan Drexler*

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28
UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

13 In re

14 MUSCLEPHARM CORPORATION,

15 Debtor.

Case No. BK-22-14422-NMC

Chapter 11

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19
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21
NOTICE OF DEPOSITION OF RYAN LANE

22 PLEASE TAKE NOTICE that, pursuant to Fed. R. Civ. P. 30, made applicable to contested
23 matters by Fed. R. Bankr. P. 7030 and 9014(c), Ryan Drexler, by and through his undersigned counsel,
24 will take the deposition upon oral examination of Ryan Lane, relating to the *Motion for Appointment of*
25 *a Chapter 11 Trustee* (ECF No. 447).

26 PLEASE TAKE NOTICE that the deposition shall commence on **Monday, August 7, 2023, at**
27 **9:00 a.m.** at the office of Schwartz Law, PLLC, located at 601 East Bridger Avenue, Las Vegas, Nevada
28 89101, or such other time and place as may be agreed to by the parties. The deposition will take place
before a court reporter, notary public, or other person authorized by law to administer oaths, and will be
recorded by stenograph, audio, and/or visual means.

1 Dated: July 24, 2023.

2 STEINHILBER SWANSON LLP

3 /s/ Michael P. Richman, Esq.

4 MICHAEL P. RICHMAN

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EXHIBIT K

EXHIBIT K

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7 | *Attorneys for the Debtor*

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:
0
1 MUSCLEPHARM CORPORATION,
Case No.: 2
Chapter 11
Debtor.

**DEBTOR'S OBJECTIONS AND RESPONSES TO RYAN DREXLER'S
OMNIBUS INTERROGATORIES, REQUESTS FOR PRODUCTION OF
DOCUMENTS, AND NOTICES OF DEPOSITION TO MUSCLEPHARM, ERIC
HILLMAN, JASON KEENAN, WILL HOVI, AND NICHOLAS RUBIN**

MusclePharm Corporation (the “**Debtor**”), debtor and debtor-in-possession in the above-captioned Chapter 11 case, submits these responses and objections to the interrogatories, requests for production of documents, and notices of deposition to the Debtor, Eric Hillman, Jason Keenan, Will Hovi, and Nicholas Rubin (collectively with Hillman, Keenan, Hovi, and Rubin, the “**Non-Party Witnesses**”) by Ryan Drexler (“**Drexler**”) on July 5, 2023.

PRELIMINARY STATEMENT AND RESERVATION OF RIGHTS

These responses are made and based upon information and documents that are presently available or specifically known to the Debtor and are subject to further discovery, independent investigation, legal research, and analysis. Further discovery may lead to additions to, changes in, or modifications of these responses. These responses are being given without prejudice to the Debtor's right to produce subsequent discovery and to introduce the same at any future hearing. The Debtor expressly reserves the right to amend and/or supplement these responses and objections.

Each response shall be subject to appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety, and admissibility) which would require the exclusion of any document or testimony if made by a witness present and testifying in court. All such objections and grounds therefore are reserved and may be interposed at the time of any hearing or trial.

OBJECTION TO NOTICES OF DEPOSITION

The Debtor makes the following general objections to the notices of deposition to the Debtor, Hillman, Keenan, Hovi, and Rubin:

1. The Debtor objects to the deposition notices because five (5) deposition notices exceeds the number of depositions permitted by the Court pursuant to the ruling on July 10, 2023.

2. The Debtor objects to the deposition notices as they fail to state the date and time of the deposition and therefore fail to provide reasonable written notice to every other party as required by Rule 30(b)(1).

3. The Debtor objects to the deposition notice directed to the Debtor (as modified by the Matters for Examination provided on July 18, 2023, the “**30(b)(6) Notice**”), because the Matters for Examination set forth therein are overbroad and unduly burdensome and the 30(b)(6) Notice fails to describe “with reasonable particularity the matters on which examination is requested” as required by Rule¹ 30(b)(6). A Rule 30(b)(6) notice must describe the matters for examination with “painstaking specificity.” *Kalis v. Colgate-Palmolive Co.*, 241 F.3d 1049, 1057, n.5 (7th Cir. 2000) (demanding “painstaking specificity”) (quoting *Prokosch v. Catalina Lighting, Inc.*, 193 F.R.D. 633, 638 (D. Minn. 2000); *see also E.E.O.C. v. Thorman & Wright Corp.*, 243 F.R.D. 421, 426 (D. Kan. 2007) (“the side taking the deposition has an obligation to “designate with painstaking specificity, the particular subject areas that are intended to be questioned, and that are relevant to the issues in dispute.”). “An overbroad Rule 30(b)(6) notice subjects the noticed party to an impossible task. To avoid liability, the noticed party must designate persons knowledgeable in the areas of inquiry listed

¹ Unless otherwise indicated, all references to the “Rules” or a “Rule” are to the Federal Rules of Civil Procedure and all references to the “Bankruptcy Rules” or a “Bankruptcy Rule” are to the Federal Rules of Bankruptcy Procedure.

1 in the notice.” *Reed v. Bennett*, 193 F.R.D. 689, 692 (D. Kan. 2000). Where the deponent “cannot
2 identify the outer limits of the areas of inquiry noticed, compliant designation is not feasible.” *Id.*

3 4. The Debtor objects to each Matter for Examination as follows:

4 **A. The Debtor’s business transactions and relationships with vendors,
5 suppliers, and customers, including the price the Debtor pays for protein
components and the price at which the Debtor sells its products.**

6 **OBJECTION:** The Debtor objects to this Matter for Examination because the terms
7 “business transactions” and “relationships” are vague. The Debtor further objects because the Matter
8 for Examination is overbroad and unduly burdensome in that it subjects the Debtor to the impossible
9 task of educating a witness regarding all aspects of the Debtor’s relationship with each of its
10 customers, vendors, and suppliers and all aspects of purchasing and sales, including, without
11 limitation, the terms of every agreement and every purchase order or sale order, over an
12 indeterminate amount of time. The Debtor cannot adequately prepare a witness to testify regarding
13 information known or reasonably available to the Debtor because it cannot identify the outer limits
14 of the areas of inquiry noticed. Further, the Matter for Examination does not identify specific
15 transactions, specific vendors, suppliers, or customers, or a definite time period, and it encompasses
16 information that is not relevant to the issues in the Trustee Motion. Because the Matter for
17 Examination does not describe the matters on which examination is requested with reasonable
18 particularity and is overbroad, the 30(b)(6) Notice fails to provide the Debtor with sufficient time to
19 adequately prepare a witness to testify fully regarding the subject matter.

20 **B. The use of debtor-in-possession financing for the payment of
21 administrative expenses and other post-petition liabilities, and for business
operations, including the Debtor’s efforts to build inventory.**

22 **OBJECTION:** The Debtor objects to this Matter for Examination because the phrase
23 “efforts to build inventory” is vague and overbroad. The Debtor further objects because the Matter
24 for Examination appears to require the Debtor to educate a witness regarding every payment made
25 by the Debtor over the course of over six months, which is overbroad, unduly burdensome, and not
26 relevant to the issues in the Trustee Motion. Because the Matter for Examination fails to describe
27 the matters on which examination is requested with reasonable particularity and is overbroad in

1 scope, the 30(b)(6) Notice does not provide the Debtor with sufficient time to adequately prepare a
2 witness to testify fully regarding the subject matter.

3 **C. The value of the Debtor's business as a going concern, or the value of the**
4 **Debtor's assets, in a sale transaction under 11 U.S.C. § 363.**

5 **OBJECTION:** The Debtor objects to the Matter for Examination because the scope is
6 unclear. The Debtor further objects because the Matter for Examination is overbroad and unduly
7 burdensome in that it subjects the Debtor to the impossible task of educating a witness regarding all
8 aspects of the Debtor's business, assets, and financial affairs. The Debtor cannot adequately prepare
9 a witness to testify regarding information known or reasonably available to the Debtor when it
10 cannot identify the outer limits of the area of inquiry. Because the Matter for Examination fails to
11 describe the matters on which examination is requested with reasonable particularity and is
12 overbroad in scope, the 30(b)(6) Notice does not provide the Debtor with sufficient time to
13 adequately prepare a witness to testify fully regarding the subject matter.

14 **D. The relationship and communications between or among any of the**
15 **Debtor, Ryan Lane, and Nicholas Rubin.**

16 **OBJECTION:** The Debtor objects to the Matter for Examination because the term
17 "relationship" is vague. The Debtor further objects because the Matter for Examination encompasses
18 communications protected by the attorney-client privilege, work-product doctrine, common interest
19 privilege, other privilege, exemption, or immunity. Further, the Matter for Examination is overbroad
20 and unduly burdensome as it fails to describe the subject matter of the communications on which
21 examination is requested with reasonable specificity and sweeps within its scope communications
22 that are not relevant to the matters at issue in the Trustee Motion, including, but not limited to,
23 prepetition communications related to the Empery financing. The Matter for Examination subjects
24 the Debtor to the impossible task of educating a witness regarding thousands of communications,
25 most of which are not relevant to any matter at issue in the Trustee Motion. The Debtor cannot
26 adequately prepare a witness to testify regarding information known or reasonably available to the
27 Debtor on such a broad topic. Because the Matter for Examination fails to describe the matters on
28 which examination is requested with reasonable particularity and is overbroad in scope, the 30(b)(6)

1 Notice does not provide the Debtor with sufficient time to adequately prepare a witness to testify
 2 fully regarding the subject matter.

3 **E. If Drexler is required to produce any information or testify about the
 4 United States Securities and Exchange Commission (“SEC”) investigation
 5 in the Debtor and certain of its officers and directors, including Case No.
 6 23-cv-5102 (C.D. Cal.), Drexler reserves his right to examine the Debtor’s
 7 designee about all communications between the Debtor and the SEC.**

8 **OBJECTION:** The Debtor objects to the Matter for Examination because it is overbroad,
 9 fails to describe the subject matter of the communications on which examination is requested with
 reasonable specificity, and fails to identify how such communications are relevant to the matters at
 issue in the Trustee Motion.

10 **GENERAL OBJECTIONS TO INTERROGATORIES AND DOCUMENT REQUESTS**

11 The Debtor makes the following general objections to each of the interrogatories (the
 12 “**Interrogatories**” and each, an “**Interrogatory**”) and requests for the production of documents (the
 13 “**Requests**” and each, a “**Request**”), whether or not set forth in the specific objections below or the
 14 subsequent responses:

15 1. The Debtor objects to the Interrogatories and Requests to the extent they seek to
 16 impose duties or obligations beyond those required by the Rules or Bankruptcy Rules, including the
 17 duty to answer Interrogatories and produce documents on behalf of the Non-Party Witnesses.

18 2. The Debtor objects to Interrogatories 1-3 and 8 as directed to Hillman, Keenan, Hovi,
 19 and Rubin because Rule 33, made applicable by Bankruptcy Rule 7033, permits propounding
 20 interrogatories only to parties. FED. R. CIV. P. 33(a)(1) (“a party may serve on any other party no
 21 more than 25 written interrogatories...”); *Holland v. Minneapolis-Honeywell Regulator Co.*, 28
 22 F.R.D. 595, 595 (D. Colo. 1961). The propounding party has no right to select the particular officer
 23 or agent to respond to interrogatories directed to a corporate party. See *Rhodes v. Elec. Data Sys.*
 24 Corp., No. CIV S-06-1715 MCE EFB PS, 2007 U.S. Dist. LEXIS 19187, at *2-3 (E.D. Cal. Mar.
 25 19, 2007).

26 3. The Debtor objects to the Interrogatories and Requests to the extent they are not
 27 proportional to the needs of the case, considering the importance of the issues at stake in the action,
 28 the amount in controversy, the parties’ relative access to relevant information, the parties’ resources,

1 the importance of the discovery in resolving the issues, and whether the burden or expense
2 compliance with the Documents Requests outweighs the likely benefit.

3 4. The Debtor objects to the Interrogatories and Requests to the extent they are overly
4 broad and/or unduly burdensome. Among other things, Requests seeking “all documents and
5 communications that refer or relate to” or “evidencing” broad subject matters are facially overbroad,
6 unduly burdensome, and not proportionate to the needs of this case. Rule 34, incorporated by
7 Bankruptcy Rules 9014 and 7034, requires a party seeking discovery to “describe with reasonable
8 particularity each item or category of items to be inspected.” FED. R. CIV. P. 34(b)(1)(A). A
9 discovery request that uses omnibus terms to modify a general category of documents or information
10 fails to describe the category of documents requested with reasonable particularity. *See, e.g., Krause*
11 *v. Nev. Mut. Ins. Co.*, No. 2:12-cv-00342-JCM-CWH, 2014 U.S. Dist. LEXIS 14872, at *16-17 (D.
12 Nev. Feb. 6, 2014) (quoting *Dauska v. Green Bay Packaging Inc.*, 291 F.R.D. 251, 261 (E.D. Wisc.
13 2013)). Such requests are impermissibly broad and burdensome because the production of
14 responsive documents would require compilation and review of a vast array of documents and
15 communications to determine whether they relate or refer to the subject matter of the request.

16 5. The Debtor objects to the Interrogatories and Requests to the extent they seek
17 information or documents that are not within the Debtor’s possession, custody, or control or they
18 require the Debtor to search for and produce information or documents not centrally maintained or
19 which are in the possession of persons not believed to have significant involvement in the matters
20 set forth in the Interrogatories or Requests. Such requests subject the Debtor to undue burden or
21 expense that outweighs the likely benefit of the discovery.

22 6. The Debtor objects to Interrogatories and Requests seeking information or
23 documents which are not reasonably accessible to the Debtor or to which Drexler has greater access
24 by virtue of his longstanding control of the Debtor until January of 2023. Such requests are not
25 proportional to the needs of the case, particularly considering the parties’ relative access and whether
26 the burden or expense of the proposed discovery outweighs its likely benefit.

27 7. The Debtor objects to the Interrogatories and Requests to the extent they seek
28 information or documents regarding transactions and relationships between non-debtor entities

1 and/or individuals. Such requests are not proportional to the needs of the case, particularly
2 considering the importance of the discovery in resolving the issues and whether the burden or
3 expense of the proposed discovery outweighs its likely benefit.

4 8. The Debtor objects to the Interrogatories and Requests to the extent they seek
5 information or documents protected by the attorney-client privilege, the work-product doctrine, the
6 consulting or non-testifying expert privilege, or any other applicable privilege, exemption, or
7 immunity. Among other things, the Interrogatories and Requests do not exclude communications
8 between the Debtor and its bankruptcy counsel, and therefore require the collection and review of
9 hundreds, if not thousands, of email communications that are protected by the attorney-client
10 privilege and work-product doctrine. Such collection and review, along with the preparation of a
11 privilege log, is not proportional to the needs of the case, particularly considering the importance of
12 the discovery in resolving the issues and the burden or expense of the proposed discovery, which
13 substantially outweighs its likely benefit. Any inadvertent production of any document shall not
14 constitute a waiver of any of the rights or privileges of the Debtor or of other parties to a
15 communication subject to a common interest privilege, and the Debtor reserves its right to demand
16 and obtain the prompt return of any such document and all copies thereof.

17 9. The Debtor objects to the Requests to the extent that they seek to compel the Debtor
18 or Non-Party Witnesses to request and produce logs of deleted text messages, as such requests are
19 overbroad, unduly burdensome, and oppressive.

20 10. The Debtor objects to the “Instructions” in the Interrogatories and Requests to the
21 extent that they seek to require the Debtor to create a document or prepare a written response where
22 the answer may be determined by examining, auditing, compiling, abstracting, or summarizing the
23 Debtor’s business records (including electronically stored information) and the burden of deriving
24 or ascertaining the answer will be substantially the same for either party.

25 11. The Debtor objects to the definition of “You” and “Your” to the extent it includes
26 individuals or entities other than the Debtor or unidentified affiliates or insiders of any individual or
27 entity other than the Debtor. For purposes of these Objections and the Debtor’s responses to the

1 Interrogatories and Requests, "You," "Your," "Debtor," and "MusclePharm" shall refer to
 2 MusclePharm Corporation and its officers, employees, and agents acting in such capacities.

3 12. The Debtor objects to the definitions of "Empery," "JWN," and "MHF" to the extent
 4 they include individuals or entities other than Empery Tax Efficient, LP, JW Nutritional LLC, MHF
 5 Opco, LLC and disclosed officers, employees, or agents thereof.

6 13. The Debtor objects to the "Definitions" in the Interrogatories and Requests to the
 7 extent that they (a) seek to expand the Debtor's obligations beyond those required by the Rules,
 8 Bankruptcy Rules, or other applicable law or rule, (b) are inconsistent with the definitions of terms
 9 set forth in 11 U.S.C. § 101 or the customary meaning of any term, (c) assume incomplete or
 10 inaccurate facts, are based on factual premises that are inaccurate or incomplete, or (d) require a
 11 legal conclusion to determine the scope of a response.

12 **SPECIFIC OBJECTIONS AND ANSWERS TO INTERROGATORIES**

13 Interrogatory Nos. 1–3 to MusclePharm Corporation, Eric Hillman, Jason Keenan, Will Hovi, and
 14 Nicholas Rubin.

15 **INTERROGATORY NO 1. Identify each person providing information for the responses to**
 16 **these Interrogatories, the specific Interrogatory for which the person provided information,**
 17 **and the title and business address of each such person.**

18 **RESPONSE TO INTERROGATORY NO. 1:** In addition to and without waiving the
 19 General Objections, the Debtor objects to the Interrogatory as it is compound, overly broad, and
 20 unduly burdensome. Information relied upon in the preparation of answers to the Interrogatories
 21 may be obtained from innumerable people, including directors, officers, and employees of the
 22 Debtor and third parties. Accordingly, answering the Interrogatory is unduly burdensome for a
 23 corporate party. The Debtor further objects to the Interrogatory as directed to the Non-Party
 24 Witnesses, as Rule 33 does not authorize interrogatories to non-parties and answers of the Non-
 25 Party Witnesses in their individual capacities would not bind the Debtor.

26 Subject to and without waiving its objections, information for the responses to the
 27 Interrogatories was obtained from myriad sources, including documents containing information
 28 provided by numerous custodians. Individuals who provided information or documents on which
 the Debtor's answers are based include, but are not limited to, the following:

1 Eric H. Hillman
2 Chairman and Chief Executive Officer
3 MusclePharm Corporation
4 c/o Samuel A. Schwartz, Esq.
5 Schwartz Law, PLLC
6 601 East Bridger Avenue
7 Las Vegas, Nevada 89101
8 Tel: 702-385-5544

9
10 Nicholas Rubin
11 Independent Director
12 MusclePharm Corporation
13 c/o Samuel A. Schwartz, Esq.

14 Interrogatories 4-7:

15 Jason Keenan
16 Director of Sales
17 MusclePharm Corporation
18 c/o Samuel A. Schwartz, Esq.

19 Will Hovi
20 Operations Manager
21 MusclePharm Corporation
22 c/o Samuel A. Schwartz, Esq.

23 **INTERROGATORY NO 2. Identify all persons whom You know, or have reason to believe,**
24 **have knowledge of any facts relevant to the issues described in the *Motion for the Appointment***
25 **of a Chapter 11 Trustee [ECF No. 447] (“Trustee Motion”).**

26 **RESPONSE TO INTERROGATORY NO. 2:** In addition to and without waiving the
27 General Objections, the Debtor objects to the Interrogatory as compound, vague, overly broad,
28 unduly burdensome. The phrase “issues described in the *Motion for the Appointment of a Chapter*
1 *11 Trustee*” is vague, overbroad, and unduly burdensome in that it requires the Debtor to determine
2 Drexler’s understanding of what “issues” are described in the Trustee Motion and what facts may
3 be relevant to such issues. The phrase “have reason to believe” renders the Interrogatory unduly
4 burdensome as it expressly imposes upon the Debtor the obligation to disclose information that it
5 does not know. The Debtor further objects to the Interrogatory as the Debtor’s response would reveal
6 its counsel’s impressions, conclusions, opinions, or legal research or theories regarding the issues
7 described in the Trustee Motion and facts relevant thereto. The Debtor further objects to the
8 Interrogatory as directed to the Non-Party Witnesses, as Rule 33 does not authorize interrogatories

1 to non-parties. Further, answers of the Non-Party Witnesses in their individual capacities would not
2 bind the Debtor.

3 Subject to and without waiving its objections, the Debtor anticipates that numerous directors,
4 officers, employees, representatives and/or agents of the Debtor, Empery, JWN, MHF, White
5 Winston Select Asset Funds, LLC, the Committee, and Drexler, along with their respective counsel
6 and advisors, have knowledge of facts that may be relevant to matters at issue in the Trustee Motion,
7 including but not limited to the following:

8 Eric H. Hillman
9 Chairman and Chief Executive Officer
10 MusclePharm Corporation
11 c/o Samuel A. Schwartz, Esq.

12 Nicholas Rubin
13 Independent Director
14 MusclePharm Corporation
15 c/o Samuel A. Schwartz, Esq.

16 Paul W. Karr
17 Chair, Audit Committee
18 MusclePharm Corporation
19 c/o Samuel A. Schwartz, Esq.

20 Rita Mikel
21 Executive Assistant to Eric H. Hillman/Human Resources
22 MusclePharm Corporation
23 c/o Samuel A. Schwartz, Esq.

24 Jason Keenan
25 Director of Sales
26 MusclePharm Corporation
27 c/o Samuel A. Schwartz, Esq.

28 Will Hovi
29 Operations Manager
30 MusclePharm Corporation
31 c/o Samuel A. Schwartz, Esq.

32 Ryan Williams
33 Portage Point Partners
34 300 North LaSalle, Suite 1420
35 Chicago, IL 60654
36 Tel: (312) 781-7531

1 Jeff Gasbarra
2 Portage Point Partners
3 300 North LaSalle, Suite 1420
Chicago, IL 60654
Tel: 708-975-0755

4 Ryan Lane
5 Empery Tax Efficient, LP
c/o William M. Noall, Esq.
6 Garman Turner Gordon
7 7251 Amigo Street, Suite 210
Las Vegas, Nevada 89119
Tel: 725-777-3000

8 Timothy Silver
9 Empery Tax Efficient, LP
c/o William M. Noall, Esq.

11 Brett Director
12 Empery Tax Efficient, LP
c/o William M. Noall, Esq.

13 Jesse Windrix
14 JW Nutritional, LLC
c/o Shara L. Larson, Esq.
Ghandi Deeter Blackham
15 725 S. 8th Street, Suite 100
Las Vegas, Nevada 89101
16 Tel: 702-878-1115

17 Todd Enright
18 White Winston Select Asset Funds, LLC
c/o Jeffrey D. Sternklar
19 101 Federal Street, Suite 1900
Boston, MA 02110-1861
20 Tel: 617-207-7800

21 Ryan Drexler
22 c/o Michael P. Richman
Steinhilber Swanson LLP
23 122 W. Washington Avenue, Suite 850
Madison, WI 53703-2732
24 Tel: 608-630-8990

25 **INTERROGATORY NO 3. State the name, occupation, address, and telephone number of**
each witness (fact or expert) that You expect to call or rely upon at a hearing on the Trustee
Motion together with a summary of the matters to be testified about within the knowledge of
each such witness.

1 **RESPONSE TO INTERROGATORY NO. 3:** In addition to and without waiving the
 2 General Objections, the Debtor objects to the Interrogatory as compound and premature. Discovery
 3 is incomplete, the Debtor has not completed its trial preparation, and further discovery, legal
 4 research, and analysis may supply additional information. The Debtor further objects to the
 5 Interrogatory to the extent directed to the Non-Party Witnesses, as Rule 33 does not authorize
 6 interrogatories to non-parties. Further, answers of the Non-Party Witnesses in their individual
 7 capacities would not bind the Debtor, and the Non-Party Witnesses, who are not parties to the
 8 Trustee Motion, will not be calling or relying upon any witnesses at the hearing on the Trustee
 9 Motion.

10 Subject to and without waiving its objections, the Debtor has not identified witnesses it
 11 expects to call at the hearing on the Trustee Motion as Drexler has not disclosed the factual basis of
 12 his allegations and discovery is incomplete. The Debtor will supplement its answer to this
 13 Interrogatory.

14

15 Interrogatory Nos. 4–7 to MusclePharm Corporation.

16 **INTERROGATORY NO 4. Identify each purchase order for Debtor's products given to the**
 17 **Debtor, the date so given, the products ordered therein, the prices, and the date or dates the**
orders were fulfilled.

18 **RESPONSE TO INTERROGATORY NO. 4:** In addition to and without waiving the
 19 General Objections, the Debtor objects to the Interrogatory to the extent it seeks information that is
 20 not relevant to the claim or defense of any party or is not proportional to the needs of the case. The
 21 Debtor further objects to the Interrogatory to the extent it requires the preparation of a compilation,
 22 abstract, audit or summary from documents in the Debtor's possession, which would be similarly
 23 burdensome and/or expensive to both Drexler and the Debtor. To the extent documents produced
 24 by the Debtor contain the requested information, the Debtor reserves the right to specify the
 25 documents that must be reviewed so as to enable Drexler to locate and identify them.

26 Subject to and without waiving its objections, the Debtor will produce documents containing
 27 the requested information.

1 **INTERROGATORY NO 5. State the amount of product inventory on a product-by-product**
2 **basis held by (a) the Debtor and (b) any contract manufacturer (such as JWN) on Debtor's**
3 **behalf, as of the end of each month during the Applicable Period.**

4 **RESPONSE TO INTERROGATORY NO. 5:** In addition to and without waiving the
5 General Objections, the Debtor objects to the Interrogatory as compound. The Debtor further objects
6 to the Interrogatory as it seeks information that is not relevant to the claim or defense of any party
7 or is not proportional to the needs of the case. The Debtor further objects to the Interrogatory to the
8 extent it requires the preparation of a compilation, abstract, audit or summary from documents in
9 the Debtor's possession, which would be similarly burdensome and/or expensive to both Drexler
10 and the Debtor. To the extent documents produced by the Debtor contain the requested information,
11 the Debtor reserves the right to specify the documents that must be reviewed so as to enable Drexler
12 to locate and identify them.

13 Subject to and without waiving its objections, the Debtor will produce documents containing
14 the requested information.

15 **INTERROGATORY NO 6. Identify each purchase order given by the Debtor to any other**
16 **product or contract manufacturers who (a) expressed a willingness to manufacture MSLP**
17 **products, or (b) did manufacture MSLP products. As to any manufacturers identified in (b),**
18 **provide the date of orders so given, the products and services ordered therein, the prices, and**
19 **the date or dates the orders were fulfilled.**

20 **RESPONSE TO INTERROGATORY NO. 6:** In addition to and without waiving the
21 General Objections, the Debtor objects to the Interrogatory as compound. The Debtor further objects
22 to the Interrogatory as it seeks information that is not relevant to the claim or defense of any party
23 or is not proportional to the needs of the case. The Debtor further objects to the Interrogatory to the
24 extent it requires the preparation of a compilation, abstract, audit or summary from documents in
25 the Debtor's possession, which would be similarly burdensome and/or expensive to both Drexler
26 and the Debtor. To the extent documents produced by the Debtor contain the requested information,
27 the Debtor reserves the right to specify the documents that must be reviewed so as to enable Drexler
28 to locate and identify them.

29 Subject to and without waiving its objections, the Debtor will produce documents containing
30 the requested information.

1 **INTERROGATORY NO. 7. Identify each order given by the Debtor to JWN to fulfill, the**
2 **date so given, the products and services ordered therein, the prices, and the date or dates the**
3 **orders were fulfilled.**

4 **RESPONSE TO INTERROGATORY NO. 7:** In addition to and without waiving the
5 General Objections, the Debtor objects to the Interrogatory as compound. The Debtor further objects
6 to the Interrogatory as it seeks information that is not relevant to the claim or defense of any party,
7 nor proportional to the needs of the case. The Debtor further objects to the Interrogatory to the extent
8 it requires the preparation of a compilation, abstract, audit or summary from documents in the
9 Debtor's possession, which would be similarly burdensome and/or expensive to both Drexler and
10 the Debtor. To the extent documents produced by the Debtor contain the requested information, the
11 Debtor reserves the right to specify the documents that must be reviewed so as to enable Drexler to
12 locate and identify them. The Debtor further objects to this Interrogatory as it is duplicative of
13 Interrogatory No. 6.

14 Subject to and without waiving its objections, the Debtor will produce documents containing
15 the requested information.

16 Interrogatory No 8 to Eric Hillman

17 **INTERROGATORY NO. 8. Identify all of Your prior and current business relationships with**
18 **Peter Jungsberger, the dates such relationships began, the nature of such relationships, and**
19 **any contracts, agreements, or other written instruments entered into between You and Peter**
20 **Jungsberger evidencing such relationships.**

21 **RESPONSE TO INTERROGATORY NO. 8:** In addition to and without waiving the
22 General Objections, the Debtor objects to the Interrogatory as Rule 33 does not authorize
23 interrogatories to non-parties. The Debtor further objects to the extent the Interrogatory seeks
24 personal financial information and private information of a Non-Party Witness that is not relevant
25 to the claim or defense of any party and subjects the Non-Party Witness to unwarranted annoyance,
26 embarrassment, oppression, or undue burden and expense. The Debtor further objects as the
27 Interrogatory is vague and ambiguous with respect to the term "current business relationships" and
28 is compound. The Debtor does not intend to respond to this Interrogatory.

Verification

I, Eric Hillman, have read the foregoing answers to the Interrogatories and declare under penalty of perjury that the information set forth therein is true and correct to the best of my knowledge.

Dated this 20th day of July, 2023.

/s/ Eric H. Hillman

Eric H. Hillman
Chief Executive Officer

SPECIFIC OBJECTIONS AND RESPONSES TO REQUESTS FOR PRODUCTION

Requests for Production Nos. 1–11 to MusclePharm Corporation, Eric Hillman, Jason Keenan, Will Hovi, and Nicholas Rubin.

REQUEST FOR PRODUCTION NO. 1. Produce all documents and communications that You relied upon to respond to the above Interrogatories.

RESPONSE TO REQUEST NO. 1: In addition to and without waiving the General Objections, the Debtor objects to the Request as overly broad, unduly burdensome, and oppressive as it fails to describe with reasonable particularity each item or category of items to be produced and requires the Debtor to identify every document or communication that contributed in some way to the Debtor's knowledge of significant elements of its business operations, which is impracticable and unduly burdensome.

Subject and without waiving its Objections, the Debtor will produce responsive, discoverable documents in its possession, custody, or control.

REQUEST FOR PRODUCTION NO. 2. Produce all documents and communications that refer or relate to any sale, auction, appraisal, or valuation of any of the Debtor's assets, in whole or in part, either before or after the Petition Date.

RESPONSE TO REQUEST NO. 2: In addition to and without waiving the General Objections, the Debtor objects to the Request as vague, ambiguous, overly broad, unduly burdensome, and/or not relevant to the claims or defenses of any party because: (1) the phrase “all documents and communications that refer or relate to” requires the Debtor to compile and review voluminous documents to determine for each whether it may arguably refer or relate to the subject matter; (2) it is not clear whether the phrase “before or after the Petition Date” modifies the

1 “Applicable Period” in the and, if so, the period of the Request; and (3) the request for “documents
 2 and communications referring or relating to any sale … of any of the Debtor’s assets, in whole or
 3 in part” may be construed to encompass every document and communication referring or relating
 4 to the Debtor’s sale of products in the ordinary course of its business. The Debtor further objects to
 5 the Request to the extent that it seeks documents protected by the attorney-client privilege, work-
 6 product doctrine, or other privilege, exemption, or immunity.

7 Subject and without waiving its Objections, the Debtor will produce responsive,
 8 discoverable documents in its possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 3. Produce all documents and communications that
 10 refer or relate to the desirability of continuing the Debtor’s business as a going concern.**

11 **RESPONSE TO REQUEST NO. 3:** In addition to and without waiving the General
 12 Objections, the Debtor objects to the Request as vague, overly broad, and/or unduly burdensome
 13 because: (1) the phrase “all documents and communications that refer or relate to” requires the
 14 Debtor to compile and review voluminous documents to determine for each whether it may arguably
 15 refer or relate to the subject matter; and (2) the phrase “the desirability of continuing the Debtor’s
 16 business as a going concern” is overbroad, vague, and does not indicate who is expected to have
 17 expressed an opinion on “the desirability of continuing the Debtor’s business as a going concern.”
 18 The Debtor further objects to the Request to the extent that it seeks documents protected by the
 19 attorney-client privilege, work-product doctrine, or other privilege, exemption, or immunity.

20 Subject and without waiving its Objections, the Debtor will produce responsive,
 21 discoverable documents in its possession, custody, or control.

22 **REQUEST FOR PRODUCTION NO. 4. Produce all documents and communications that
 23 refer or relate to the retention of Nicholas Rubin as the Debtor’s independent director.**

24 **RESPONSE TO REQUEST NO. 4:** In addition to and without waiving the General
 25 Objections, the Debtor objects to the Request as overly broad and/or unduly burdensome because the
 26 phrase “all documents and communications that refer or relate to” requires the Debtor to compile
 27 and review voluminous documents to determine for each whether it may arguably refer or relate to
 28 the subject matter. The Debtor further objects to the Request to the extent that it seeks documents

1 protected by the attorney-client privilege, work-product doctrine, or other privilege, exemption, or
2 immunity. The Debtor further objects to the Request as duplicative or cumulative of requests
3 contained in the May 11, 2023 Subpoena to Rubin.

4 Subject and without waiving its Objections, the Debtor will produce responsive,
5 discoverable documents in its possession, custody, or control.

6 **REQUEST FOR PRODUCTION NO. 5. Produce all documents and communications with
7 Empery regarding Ryan Drexler.**

8 **RESPONSE TO REQUEST NO. 5:** In addition to and without waiving the General
9 Objections, the Debtor objects to the Request as vague and ambiguous with respect to the request
10 for “documents … with Empery regarding Ryan Drexler.” The Debtor will construe this Request as
11 seeking communications between the Debtor and Empery that refer to Drexler. The Debtor further
12 objects to the Request to the extent that it seeks documents which are not relevant to the claims or
13 defenses of any party and documents protected by the attorney-client privilege, work-product
14 doctrine, or other privilege, exemption, or immunity.

15 Subject and without waiving its Objections, the Debtor will produce responsive,
16 discoverable documents in its possession, custody, or control.

17 **REQUEST FOR PRODUCTION NO. 6. Produce all documents and communications that
18 refer or relate to any new customers to which the Debtor has sold products since the Petition
Date.**

19 **RESPONSE TO REQUEST NO. 6:** In addition to and without waiving the General
20 Objections, the Debtor objects to the Request as overly broad and/or unduly burdensome because the
21 phrase “all documents and communications that refer or relate to” requires the Debtor to compile
22 and review voluminous documents to determine for each whether it may arguably refer or relate to
23 the subject matter. The Debtor further objects to the Request to the extent that it seeks documents
24 protected by the attorney-client privilege, work-product doctrine, or other privilege, exemption, or
25 immunity.

26 Subject and without waiving its Objections, the Debtor will produce responsive,
27 discoverable documents in its possession, custody, or control.

28

1 **REQUEST FOR PRODUCTION NO. 7. Produce all documents and communications that**
2 **refer or relate to interest expressed by any customers to which the Debtor had the opportunity**
3 **to sell products, but did not sell products, since the Petition Date.**

4 **RESPONSE TO REQUEST NO. 7:** In addition to and without waiving the General
5 Objections, the Debtor objects to the Request as vague, ambiguous, overly broad and/or unduly
6 burdensome because: (1) the phrase “all documents and communications that refer or relate to”
7 requires the Debtor to compile and review voluminous documents to determine for each whether it
8 may arguably refer or relate to the subject matter; and (2) the phrase “opportunity to sell products”
9 is unclear and will be difficult to ascertain without additional context. The Debtor further objects to
10 the Request to the extent that it seeks documents which are not relevant to the claims or defenses of
11 any party and documents protected by the attorney-client privilege, work-product doctrine, or other
privilege, exemption, or immunity.

12 Subject and without waiving its Objections, the Debtor will produce responsive,
13 discoverable documents in its possession, custody, or control.

14 **REQUEST FOR PRODUCTION NO. 8. Produce all documents and communications that**
15 **refer or relate to marketing of the Debtor’s products.**

16 **RESPONSE TO REQUEST NO. 8:** In addition to and without waiving the General
17 Objections, the Debtor objects to the Request as vague, overly broad and/or unduly burdensome,
18 including because the phrase “all documents and communications that refer or relate to” requires
19 the Debtor to compile and review voluminous documents to determine for each whether it may
20 arguably refer or relate to the subject matter. The Debtor further objects to the Request to the extent
21 that it seeks documents which are not relevant to the claims or defenses of any party or is not
22 proportional to the needs of the case.

23 Subject and without waiving its Objections, the Debtor will produce responsive,
24 discoverable documents in its possession, custody, or control.

25 **REQUEST FOR PRODUCTION NO. 9. Produce all documents and communications that**
26 **refer or relate to any sellers to, or purchasers from, the Debtor that have ceased doing business**
27 **with the Debtor.**

28 **RESPONSE TO REQUEST NO. 9:** In addition to and without waiving the General
Objections, the Debtor objects to the Request as vague, overly broad and/or unduly burdensome

1 because: (1) the phrase “all documents and communications that refer or relate to” requires the
 2 Debtor to compile and review voluminous documents to determine for each whether it may arguably
 3 refer or relate to the subject matter; and (2) it is not clear if the phrase “ceased doing business”
 4 encompasses sellers or customers who have not made sales to the Debtor or purchased product from
 5 the Debtor for a period of time and, if so, the length of time since the last sale or purchase deemed
 6 to mean that the seller or purchaser has ceased doing business with the Debtor. The Debtor further
 7 objects to the Request to the extent that it seeks documents which are not relevant to the claims or
 8 defenses of any party or seeks documents protected by the attorney-client privilege, work-product
 9 doctrine, or other privilege, exemption, or immunity.

10 Subject and without waiving its Objections, the Debtor will produce responsive,
 11 discoverable documents in its possession, custody, or control.

12 **REQUEST FOR PRODUCTION NO. 10. Produce all documents and communications that
 13 refer or relate to increases or decreases in product inventory held by the Debtor or by JWN
 on the Debtor's behalf.**

14 **RESPONSE TO REQUEST NO. 10:** In addition to and without waiving the General
 15 Objections, the Debtor objects to the Request as vague, overly broad and/or unduly burdensome
 16 because: (1) the phrase “all documents and communications that refer or relate to” requires the
 17 Debtor to compile and review voluminous documents to determine for each whether it may arguably
 18 refer or relate to the subject matter; and (2) it is not clear if the phrase “increases or decreases in
 19 product inventory” is seeking or refers to documents regarding inventory levels after every
 20 production or shipment or if some threshold applies. If the Request is seeking documents regarding
 21 every change in inventory, the Request is overly broad and unduly burdensome, seeks documents
 22 that are not relevant to the claim or defense of any party and is not proportional to the needs of the
 23 case.

24 Subject and without waiving its Objections, the Debtor will produce responsive,
 25 discoverable documents in its possession, custody, or control.

26 **REQUEST FOR PRODUCTION NO. 11. Produce all documents and communications that
 27 refer or relate to the Debtor's engagement or termination of product manufacturers or
 contract manufacturers.**

1 **RESPONSE TO REQUEST NO. 11:** In addition to and without waiving the General
 2 Objections, the Debtor objects to the Request as vague, overly broad and/or unduly burdensome
 3 because (1) the phrase “all documents and communications that refer or relate to” requires the
 4 Debtor to compile and review voluminous documents to determine for each whether it may arguably
 5 refer or relate to the subject matter; and (2) the meaning of the term “termination” is unclear in this
 6 context. The Debtor further objects to the Request to the extent that it seeks documents which are
 7 not relevant to the claims or defenses of any party or seeks documents protected by the attorney-
 8 client privilege, work-product doctrine, or other privilege, exemption, or immunity.

9 Subject and without waiving its Objections, the Debtor will produce responsive,
 10 discoverable documents in its possession, custody, or control.

11

12 Requests for Production Nos. 12–15 to MusclePharm Corporation

13 **REQUEST FOR PRODUCTION NO. 12. Produce all variance reports submitted by the**
 14 **Debtor since May 19 pursuant to the terms of the Final DIP Order [ECF No. 296] and final**
debtor-in-possession financing agreement between the Debtor and Empery.

15 **RESPONSE TO REQUEST NO. 12:** Subject and without waiving its Objections, the
 16 Debtor will produce responsive, discoverable documents in its possession, custody, or control.

17 **REQUEST FOR PRODUCTION NO. 13. Produce all documents and communications that**
 18 **refer or relate to the Commentary section within the Cash Flow Variance Summary in the**
variance reports.

19 **RESPONSE TO REQUEST NO. 13:** In addition to and without waiving the General
 20 Objections, the Debtor objects to the Request as vague, overly broad and/or unduly burdensome
 21 because (1) the phrase “all documents and communications that refer or relate to” requires the
 22 Debtor to compile and review voluminous documents to determine for each whether it may arguably
 23 refer or relate to the subject matter; and (2) documents and communications referring or relating to
 24 the Commentary section within the Cash Flow Variance Summary could be construed to encompass
 25 nearly all documents and communications regarding the Debtor’s finances and business operations.

26 Subject and without waiving its Objections, the Debtor will produce responsive,
 27 discoverable documents in its possession, custody, or control.

1 **REQUEST FOR PRODUCTION NO. 14. Produce all documents and communications that**
2 **refer or relate to contracts or agreements between the Debtor and JWN.**

3 **RESPONSE TO REQUEST NO. 14:** In addition to and without waiving the General
4 Objections, the Debtor objects to the Request as vague, overly broad and/or unduly burdensome
5 because the phrase “all documents and communications that refer or relate to” requires the Debtor
6 to compile and review voluminous documents to determine for each whether it may arguably refer
7 or relate to the subject matter. The Debtor will construe this Request to seek documents and
8 communications which discuss or set forth the terms of the contracts or agreements between the
9 Debtor and JWN. The Debtor further objects to the Request to the extent that it seeks documents
10 protected by the attorney-client privilege, work-product doctrine, or other privilege, exemption, or
11 immunity.

12 Subject and without waiving its Objections, the Debtor will produce responsive,
13 discoverable documents in its possession, custody, or control.

14 **REQUEST FOR PRODUCTION NO. 15. Produce all documents and communications that**
15 **refer or relate to sales of JWN’s products or services to the Debtor.**

16 **RESPONSE TO REQUEST NO. 15:** In addition to and without waiving the General
17 Objections, the Debtor objects to the Request as vague, overly broad and/or unduly burdensome
18 because (1) the phrase “all documents and communications that refer or relate to” requires the
19 Debtor to compile and review voluminous documents to determine for each whether it may arguably
20 refer or relate to the subject matter. The Debtor further objects to the Request to the extent that it
21 seeks documents protected by the attorney-client privilege, work-product doctrine, or other
22 privilege, exemption, or immunity.

23 Subject and without waiving its Objections, the Debtor will produce responsive,
24 discoverable documents in its possession, custody, or control.

1 Requests for Production Nos. 16–17 to Eric Hillman

2 **REQUEST FOR PRODUCTION NO. 16.** Produce all documents and communications
3 evidencing Your prior and current business relationships with Peter Jungsberger, including,
4 but not limited to, those documents identified in Interrogatory No. 8.

5 **RESPONSE TO REQUEST NO. 16:** In addition to and without waiving the General
6 Objections, the Debtor objects to the Request as it seeks personal financial information and private
7 information from a Non-Party Witness that is not relevant to the claim or defense of any party and
8 subjects the Non-Party Witness to unwarranted annoyance, embarrassment, oppression, or undue
9 burden and expense. The Debtor further objects as the Request is vague and ambiguous with respect
10 to the term “current business relationships.” The Debtor will not produce documents in response to
this Request.

11 **REQUEST FOR PRODUCTION NO. 17.** Produce all documents and communications that
12 refer or relate to your investment in, or extension of credit to, any entity in which Peter
13 Jungsberger is an officer, director, principal shareholder, or principal creditor.

14 **RESPONSE TO REQUEST NO. 17:** In addition to and without waiving the General
15 Objections, the Debtor objects to the Request as overly broad and/or unduly burdensome because the
16 phrase “all documents and communications that refer or relate to” requires the Debtor to compile
17 and review voluminous documents to determine for each whether it may arguably refer or relate to
the subject matter. The Debtor further objects to the Request as it seeks personal financial
18 information and private information from a Non-Party Witness that is not relevant to the claim or
defense of any party and subjects the Non-Party Witness to unwarranted annoyance, embarrassment,
19 oppression, or undue burden and expense. The Debtor will not produce documents in response to
20 this Request.

21
22
23 Requests for Production Nos. 18–19 to Nicholas Rubin

24
25 **REQUEST FOR PRODUCTION NO. 18.** Produce all documents and communications that
26 refer or relate to your retention as the Debtor’s independent director.

27 **RESPONSE TO REQUEST NO. 18:** In addition to and without waiving the General
28 Objections, the Debtor objects to the Request as overly broad and/or unduly burdensome because the

1 phrase “all documents and communications that refer or relate to” requires the Debtor to compile
 2 and review voluminous documents to determine for each whether it may arguably refer or relate to
 3 the subject matter. The Debtor further objects to the Request to the extent that it seeks documents
 4 protected by the attorney-client privilege, work-product doctrine, or other privilege, exemption, or
 5 immunity. The Debtor further objects to the Request as duplicative or cumulative of requests
 6 contained in the May 11, 2023, Subpoena to Rubin.

7 Subject and without waiving its Objections, the Debtor will produce responsive,
 8 discoverable documents in its possession, custody, or control.

9 **REQUEST FOR PRODUCTION NO. 19. Produce all documents and communications that**
 10 **refer or relate to your investment in Lawclerk.Legal or any other entity in which Gregory**
Garman is an officer, director or principal shareholder.

11 **RESPONSE TO REQUEST NO. 19:** In addition to and without waiving the General
 12 Objections, the Debtor objects to the Request as overly broad and/or unduly burdensome because the
 13 phrase “all documents and communications that refer or relate to” requires the Debtor to compile
 14 and review voluminous documents to determine for each whether it may arguably refer or relate to
 15 the subject matter. The Debtor further objects to the Request as it seeks personal financial
 16 information and private information from a Non-Party Witness that is not relevant to the claim or
 17 defense of any party and subjects the Non-Party Witness to unwarranted annoyance, embarrassment,
 18 oppression, or undue burden and expense.

19 Subject and without waiving its Objections, the Debtor will produce documents sufficient to
 20 show Mr. Rubin’s investment in Lawclerk.

21
 22 Request for Production No. 20 to MusclePharm Corporation, Eric Hillman, Jason Keenan, Will
Hovi, and Nicholas Rubin

23
 24 **REQUEST FOR PRODUCTION NO. 20. To the extent text messages responsive to the above**
requests directed to You were deleted from Your mobile phone and are unrecoverable from
cloudbased or hard drive backups, please immediately request from your service provider and
produce a log of such text messages containing the date, time, to, from, direction, and message
type (i.e., text, picture/video, etc.) for each message. Such logs may also be available to be
generated directly by You through Your online account, without requesting them from Your
provider.

1 **RESPONSE TO REQUEST NO. 20:** In addition to and without waiving the General
2 Objections, the Debtor objects to the Request as overly broad, unduly burdensome, and oppressive,
3 seeks information that is not relevant to the claim or defense of any party or is not proportional to
4 the needs of the case. The Debtor further objects to the Request as directed to Non-Party Witnesses
5 because it subjects the Non-Party Witness to unwarranted annoyance, embarrassment, oppression,
6 or undue burden and expense. The Debtor will not produce documents in response to this Request.

7 Dated: July 20, 2023.

8 SCHWARTZ LAW, PLLC

9 By: /s/ Gabrielle A. Hamm
10 Samuel A. Schwartz, Esq.
11 Gabrielle A. Hamm, Esq.
12 601 East Bridger Avenue
13 Las Vegas, NV 89101

14 *Attorneys for the Debtor*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via email on July 20, 2023, to the following:

Michael P. Richman, Esq., mrichman@steinhilberswanson.com
Michael Jurkash, Esq., mjurkash@steinhilberswanson.com
Brian D. Shapiro, Esq., brian@brianshapirolaw.com
for Ryan Drexler

Jason H. Rosell, Esq., jrosell@pszjlaw.com
John D. Fiero, Esq., jfiero@pszjlaw.com
for Official Committee of Unsecured Creditors

William M. Noall, Esq., wnoall@gtg.legal
Gregory E. Garman, Esq., ggarman@gtg.legal
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Teresa M. Pilatowicz, Esq., tpilatowicz@gtg.legal
for Empery Tax Efficient, LP

Jeffrey D. Sternklar, Esq., jeffrey@sternklarlaw.com
for White Winston Select Asset Funds, LLC

Shara L. Larson, Esq., shara@ghandilaw.com
for JW Nutritional LLC

Joseph G. Went, Esq., JGWent@hollandhart.com
for MHF Opco, LLC

By: /s/ Gabrielle A. Hamm

Gabrielle A. Hamm
SCHWARTZ LAW, PLLC

EXHIBIT L

EXHIBIT L

1 Olivier H. Reiher (*pro hac vice* admission pending)
2 David P. Hollander (*pro hac vice* admission pending)
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8 **UNITED STATES BANKRUPTCY COURT**
DISTRICT OF NEVADA

9 In re: Case No. 22-14422-NMC
10 MUSCLEPHARM CORPORATION, Chapter 11
11 Debtor.
12

13 **BRIAN SLATER'S RESPONSES AND OBJECTIONS TO RYAN DREXLER'S**
SUBPOENA FOR DOCUMENT PRODUCTION AND TESTIMONY

14 Brian Slater (“Slater”), by and through his undersigned counsel, hereby responds to the
15 Subpoena for Document Production of Brian Slater issued by Ryan Drexler (“Drexler”), including the
16 individually numbered Requests for Production (“Requests”) set forth in Exhibit A to the Subpoena.
17

18 **GENERAL OBJECTIONS**

19 Each numbered response to Drexler's Requests set forth below is subject to the following
20 General Objections. These General Objections form a part of each of Slater's individually numbered
21 responses below, even with respect to any numbered response that does not specifically reference these
22 General Objections. Failure to incorporate any of the General Objections into any specific response
23 does not waive any General Objection with respect to that specific response, nor should it be construed
24 as a waiver of same.

25 1. Slater objects to the Requests to the extent that any one or more of the Requests place
26 obligations on Slater that exceed the requirements of the Federal Rules of Bankruptcy Procedure, the
27 Federal Rules of Civil Procedure, or other applicable law.
28

1 2. Slater objects to the Requests to the extent that any one or more of the Requests seeks
2 the production of documents or information that are subject to the attorney-client privilege, work
3 product doctrine, joint or community interest doctrine, protections for experts employed only for trial
4 preparation, or any other applicable privilege, protection, or immunity from discovery.

5 3. Slater objects to the Requests to the extent that any one or more of the Requests seeks
6 information that is not relevant to the claims or defenses asserted in this proceeding, or that is unlikely
7 to lead to the discovery of admissible evidence.

8 4. Slater objects to the Requests to the extent that any one or more of the Requests seeks
9 the production or disclosure of Slater's or MHF Opco, LLC's ("Mill Haven") personal information,
10 confidential information, trade secret information, or information that is sensitive or protected by state
11 or federal law.

12 5. Slater objects to the Requests to the extent that any one or more of the Requests is
13 overbroad, unduly burdensome, vague, ambiguous, or confusing. The Federal Rules of Civil Procedure
14 do not predicate the ability to seek vindication of important rights upon the ability of such parties to
15 devote enormous amounts of time to finding and reviewing, for the purpose of responding to such
16 Requests, materials that are "not reasonably accessible due to undue burden or cost." Fed. R. Civ. P.
17 26(b)(2)(B). Slater further objects to the Requests to the extent that any one or more of the Requests
18 requires speculation to determine its meaning or imprecisely describes the information sought.

19 6. Slater objects to the Requests as unduly burdensome to the extent that any one or more
20 of the Requests seeks information that is a matter of public record, is not in Slater's possession,
21 custody, or control, is already in Drexler's possession, custody, or control, or is otherwise readily
22 available to Drexler from a source other than Slater.

23 7. Slater objects to the Requests to the extent they seek information regarding
24 transactions, sales, contracts, or other interactions between the Debtor and other third-party entities

1 that may or may not have done business with the Debtor at any given point, as seeking information
2 that is not in Slater's possession, custody, or control, that is neither relevant nor proportional to the
3 needs of the case, that is unreasonably cumulative or duplicative, or can be obtained from some other
4 source that is more convenient, less burdensome, or less expensive. Fed. R. Civ. P. 26(b)(2)(C)(i).

5
6 8. Slater objects to the Requests to the extent that any one or more of the Requests is not
7 proportional to the needs of the case.

8
9 9. Slater objects to the Requests to the extent that any one or more of the Requests is
10 duplicative.

11 10. Slater reserves the right to object to the admissibility of any information contained in
12 his responses to the Requests.

13 11. Slater reserves the right to supplement his answers or responses to all Requests.
14 12. Slater objects to Drexler's definition as "Your" or "You" and Instruction No. 4 as
15 overbroad and unduly burdensome, and as imposing production obligation on Slater to produce
16 documents not in his possession, custody, or control. Slater further objects to the definition of "You"
17 and "Your" as overbroad and nonsensical in that the words are defined to include any affiliated person
18 or entity. For purposes of responding to these Requests, Slater defines "You" and "Your" to mean
19 Slater and Mill Haven.
20

21 13. Slater objects to the Drexler's "Definitions" to the extent that they (a) seek to impose
22 on Slater conditions or obligations beyond those required by or authorize by the Federal Rules of
23 Bankruptcy Procedure, the Federal Rules of Civil Procedure, or any other applicable law or rule, (b)
24 misdefine terms or depart from the customary meaning of any term, (c) are based on factual premises
25 that are inaccurate or incomplete, (d) are overly broad or expansive to the inclusion of third parties
26 that are outside of Slater's control, or (e) require Slater to reach legal conclusions in order to respond
27 or determine the scope of a response.
28

1 **RESPONSES TO REQUESTS FOR PRODUCTION**
2

3 **REQUEST FOR PRODUCTION NO. 1:** Produce all documents and communications that refer or
4 relate to any sale, auction, appraisal, or valuation of any of the Debtor's assets, in whole or in part,
either before or after the Petition Date.

5 **RESPONSE:** Slater objects to this request as vague, overbroad, duplicative, unduly
6 burdensome, is not reasonably calculated to lead to the discovery of admissible evidence, or seeks the
7 production of documents that are subject to attorney-client privilege, the work product doctrine, or the
8 common interest doctrine. Slater objects to this request on the basis that it calls for the production of
9 privileged communications between Slater and his counsel or between Slater and the Unsecured
10 Creditors Committee's counsel. Slater further objects on the basis that the request seeks information
11 that is confidential, constitutes a trade secret, or is otherwise protected by law.

12 **REQUEST FOR PRODUCTION NO. 2:** Produce all documents and communications that refer or
13 relate to the desirability of continuing the Debtor's business as a going concern.

14 **RESPONSE:** *See Response to Request No. 1.*

15 **REQUEST FOR PRODUCTION NO. 3:** Produce all documents and communications that refer or
16 relate to the retention of Nicholas Rubin as the Debtor's independent director.

17 **RESPONSE:** *See Response to Request No. 1.*

18 **REQUEST FOR PRODUCTION NO. 4:** Produce all documents and communications with
19 Empery regarding Ryan Drexler.

20 **RESPONSE:** *See Response to Request No. 1.* Subject to and without waiving his objections,
21 Slater will produce documents to the extent those documents have not already been provided to
22 Drexler or made available to Drexler or his counsel.

23 **REQUEST FOR PRODUCTION NO. 5:** Produce all documents and communications that refer or
24 relate to any new customers to which the Debtor has sold products since the Petition Date.

25 **RESPONSE:** Slater objects to this request as vague, overbroad, duplicative, unduly
26 burdensome, is not reasonably calculated to lead to the discovery of admissible evidence, or seeks the
27

1 production of documents that are subject to attorney-client privilege, the work product doctrine, or the
2 common interest doctrine. Slater objects to this request on the basis that it calls for the production of
3 privileged communications between Slater and his counsel or between Slater and the Unsecured
4 Creditors Committee's counsel. Slater further objects on the basis that the request seeks information
5 that is confidential, constitutes a trade secret, or is otherwise protected by law. Finally, Slater objects
6 to this request on the basis that it seeks information that is not within his control given Slater's lack of
7 involvement in the business affairs of the Debtor.

9 **REQUEST FOR PRODUCTION NO. 6:** Produce all documents and communications that refer or
10 relate to interest expressed by any customers to which the Debtor had the opportunity to sell
products, but did not sell products, since the Petition Date.

12 **RESPONSE:** *See* Response to Request No. 5.

13 **REQUEST FOR PRODUCTION NO. 7:** Produce all documents and communications that refer or
14 relate to marketing of the Debtor's products.

15 **RESPONSE:** *See* Response to Request No. 5.

16 **REQUEST FOR PRODUCTION NO. 8:** Produce all documents and communications that refer or
17 relate to any sellers to, or purchasers from, the Debtor that have ceased doing business with the
Debtor.

18 **RESPONSE:** *See* Response to Request No. 5.

20 **REQUEST FOR PRODUCTION NO. 9:** Produce all documents and communications that refer or
21 relate to the Debtor's engagement or termination of product manufacturers or contract
manufacturers.

22 **RESPONSE:** *See* Response to Request No. 5.

23 **REQUEST FOR PRODUCTION NO. 10:** Produce all documents and communications that refer
24 or relate to contracts or agreements between JWN and MHFs.

25 **RESPONSE:** Slater objects to this request as overbroad, unduly burdensome, and not
26 reasonably calculated to lead to the discovery of admissible evidence, as the request seeks wholesale
27 production of broad swaths of documents related to Mill Haven's operations and business dealings
28

1 with JWN, many of which have nothing to do with the Debtor. Slater also objects to this request as it
2 seeks the production of documents that are subject to attorney-client privilege, the work product
3 doctrine, or the common interest doctrine. Slater objects to this request on the basis that it calls for
4 the production of privileged communications between Slater and his counsel or between Slater and
5 the Unsecured Creditors Committee's counsel. Slater further objects on the basis that the request seeks
6 information that is confidential, constitutes a trade secret, or is otherwise protected by law.
7

8 Subject to and without waiving his objections, Slater will produce documents to the extent
9 those documents have not already been provided to Drexler or made available to Drexler or his
10 counsel.
11

12 **REQUEST FOR PRODUCTION NO. 11:** Produce all documents and communications that refer
13 or relate to sales of MHF's products or services to JWN, including, but not limited to, an accounting
14 of sales of protein and protein products to JWN on a monthly basis beginning with December 2022
15 (as of December 31, 2022), and monthly thereafter as of the end of each month. The accounting
should reflect the quantities of products sold and the prices at which they were sold to JWN for each
month.
16

17 **RESPONSE:** *See Response to Request No. 10.* Subject to and without waiving his objections,
18 Slater will produce documents, including any pre-existing summaries or accountings of Mill Haven's
19 sales to the JWN, to the extent those documents have not already been provided to Drexler or made
available to Drexler or his counsel.
20

21 **REQUEST FOR PRODUCTION NO. 12:** Produce all documents and communications that refer
22 or relate to MHF's willingness to work with Empery to re-start the supply of products to the Debtor
as described in your letter to Ryan Lane and Tim Silver dated December 21, 2022.
23

24 **RESPONSE:** *See Response to Request No. 1.* Subject to and without waiving his objections,
25 Slater will produce documents to the extent those documents have not already been provided to
Drexler or made available to Drexler or his counsel.
26

27 **REQUEST FOR PRODUCTION NO. 13:** To the extent text messages responsive to the above
28 requests directed to You were deleted from Your mobile phone and are unrecoverable from cloudbased
or hard drive backups, please immediately request from your service provider and produce a log of
such text messages containing the date, time, to, from, direction, and message type (i.e., text,
29

1 picture/video, etc.) for each message. Such logs may also be available to be generated directly by You
2 through Your online account, without requesting them from Your provider.

3 **RESPONSE:** Slater objects to this request as vague, overbroad, duplicative, unduly
4 burdensome, is not reasonably calculated to lead to the discovery of admissible evidence, or seeks the
5 production of documents that are subject to attorney-client privilege, the work product doctrine, or the
6 common interest doctrine. Slater objects to this request on the basis that it calls for the production of
7 privileged communications between Slater and his counsel or between Slater and the Unsecured
8 Creditors Committee's counsel. Slater further objects on the basis that the request seeks information
9 that is confidential, constitutes a trade secret, or is otherwise protected by law. Finally, Slater objects
10 to this request to the extent that it seeks to expand the duties in responding to a subpoena under Rule
11 45(e).

13
14
15 Dated: July 17, 2023

STAFFORD ROSENBAUM LLC

17 */s/ Olivier H. Reiher*
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